

THE NORTH CAROLINA STATE BAR

# JOURNAL

SUMMER  
2022

**CHANGES  
AHEAD**



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THE  
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Jennifer R. Duncan

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*Publication of an article in the Journal is not an endorsement by the North Carolina State Bar of the views expressed therein.*



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# Takeaways from the April 2022 Quarterly Meeting

BY DARRIN D. JORDAN

## 50 Year Lawyers Luncheon

For longer than I have been a member of the North Carolina State Bar Council, the State Bar has recognized attorneys who have been licensed for 50 years at a luncheon during the annual meeting held each October. This has been described by past and present officers and councilors as one of the highlights of their service to the State Bar Council. I have always enjoyed attending these luncheons during my time on the council, and I can't remember a time when I've missed this event. I not only consider it a wonderful opportunity to meet individuals I've never met, but it is also a great time to hear "war stories" from long and interesting careers, many of which provide insight into how practicing law has evolved.

These luncheons have always been meaningful to me and to the honorees. Over the last two years, the health crisis that gripped our world put these celebrations on hold, and we searched for an opportunity to recognize these lawyers at an "in person" event. After two postponements, we were finally able to schedule the luncheon celebrating the 1971 50 year lawyer class for the April 2022 Quarterly Meeting. The importance and meaningfulness of this luncheon to the honorees became even more clear to me as we approached the April meeting.

A week before that meeting, I was asked to travel to one of our rural counties to present a certificate of appreciation to a North Carolina attorney who will have been a licensed North Carolina lawyer for 50 years this coming fall. As I mentioned, these presentations usually take place at our October Annual Meeting, but this distinguished gentleman has been diagnosed with cancer and is currently in decline in a way that puts the chances that he will be well enough to come

to Raleigh in jeopardy; in reality he may not live to see October.

The presentation was not a solemn occasion in light of the circumstances, but was a celebration that included his wife, his son, his grandson, his former law partner, other individuals from the local courthouse, and his paralegal and friend of over 31 years, who had written a poem about the service this gentleman had provided to his community and to his clients. It was truly incredible to have the opportunity to be a part of this presentation.



The recognition of an individual who has been licensed to practice law for 50 years is an important event for the North Carolina State Bar Council and, as I experienced in going to this rural county, it is extremely meaningful to the individuals being honored.

I would recommend reading the "life in the law" essays of the Class of 1971, which can be found on the State Bar's website at [bit.ly/2022-50Year](https://bit.ly/2022-50Year). There are funny stories, stories that provide historical context, and one of my favorites, Michael Crowell's 19 "lessons from 50 years of practicing law." Finally, I would encourage you to look at the list of the Class of 1971 and reach out to them with a call or a card congratulating them on this accomplishment. In October of this year, we will hopefully be back on schedule as we honor the Class of 1972.

## COVID Revisits

I have always described myself as a "glass half full" kind of person and, I sincerely hope that I've made that apparent in how I have lived my life and how I approach each day. During the pandemic, I have been cautious but not overly cautious. I've been vaccinated and taken the booster (the second booster

will soon be on my schedule), but I've also attended gatherings of large groups both indoors and outdoors, with and without a mask. When the officers and the executive staff of the State Bar decided to convert the January Quarterly Meeting to virtual events, well, let's just say that really took me to a new all-time low. But the planning and scheduling of an in-person meeting during the April Quarterly Meeting reenergized me, and I was really excited to be in the presence of friends and colleagues I hadn't seen since October.

The April Quarterly Meeting was everything I had hoped for and more. The progress made by the council is a testament to how much good work can be accomplished when you are in the same room with other decisionmakers; virtual meetings are convenient, but not as effective. If you disagree, let's just say we will have to agree to disagree and still be friends.

Shortly after the April Quarterly meeting, I decided that it would be a good idea to do an at-home COVID test. There are many factors that led me to that decision which I will not go into, but I was not surprised when the at-home test was positive, and a subsequent PCR test was also positive. There is no way of knowing where or when I was infected. Some believe that I was infected during the week of the quarterly meeting, and some might believe my infection was the result of my "irresponsible behavior" (see the comments in my opening paragraph). To me, it really doesn't matter where it came from and how I got it.

For some time now I have believed that at some point two things will become realities when it comes to COVID. First, we all will be infected (or already have been and don't know it). Second, it is time to "leave the cave" and get back to living as we did pre-pandemic. My recent experience with COVID has not changed my mind as to the latter, but that is because my symptoms were very mild, and

CONTINUED ON PAGE 24

# Human Trafficking in North Carolina, and How the WORTH Court Works to Combat It

BY JENNIFER HAIGWOOD, LINDSAY LANE, AND BENGIE HAIR

In January 2022, Jennifer Haigwood, chair of the North Carolina Human Trafficking Commission, served as guest host on *All Things Judicial*, a podcast from the North Carolina Judicial Branch. Every year, January is recognized as Human Trafficking



Awareness month. The January episode highlighted the We Overcome Recidivism through Healing (WORTH) Court, which is a human trafficking diversion court in Cumberland County. Lindsey Lane, former assistant district attorney in Cumberland County, and Bengie Hair, coordinator for the Cumberland County WORTH Court Program served as podcast guests.

Until recently, Ms. Lane was the main prosecutor for human trafficking cases in Cumberland County. She also served as prosecutor in the WORTH Court and, along with Cumberland County District Court Judge Toni King, was instrumental in the program's initial establishment. Lindsey is now located in Alabama and works as the

senior legal counsel for the Human Trafficking Institute. Mr. Hair is the coordinator of the WORTH Court, which is North Carolina's first human trafficking diversion court, organized in 2019. He organizes the court's advisory council activities run by organizations that help both clients and staff.

Following is an edited transcription of the

January podcast.

## What is human trafficking?

Ms. Lane: The legal definition in North Carolina for human trafficking is when a person knowingly or in reckless disregard of the consequences of the action, recruits, entices, harbors, transports, provides, or obtains by

any means another person with intent that that person be held in involuntary servitude or sexual servitude. This is done by force, fraud, or coercion. Practically speaking, it's when someone profits from exploiting another person. That can be through commercial sex, such as prostitution, or forced labor.

**This is a complex crime and includes many situations. During your time prosecuting these cases, can you describe different scenarios you saw?**

Ms. Lane: There are a lot of different types. NC divides trafficking into two categories: labor trafficking, which is involuntary servitude; and commercial sex trafficking, which we call sexual servitude. Labor trafficking includes someone who is forced to work—often without pay—and the employer is physically forcing them to work or coercing them by some means, or they're engaged in some kind of fraud. Sometimes in NC, in an area such as agriculture or domestic work, it involves someone who comes from a very vulnerable population. Maybe they have a vulnerable legal status, specifically immigrants. And it might be that their visas are being held by the employer to exploit them for free labor. But it can also include child labor, where children are being worked illegally and not being paid. And NC also has what's more commonly known—the commercial sex trafficking industry. That's where traffickers are using force, fraud, or coercion to cause another person to work in commercial sex. This is what's most well known and most often prosecuted. We see this primarily online, where there are hundreds of websites that traffickers use to advertise their victims and solicit buyers. And of course, the trafficker takes the money that's received from those commercial sex acts.

We also see a hybrid type of trafficking that you might have heard of on the news involving massage parlors. That's when victims are engaging in forced labor, but they are also engaging in the commercial sex industry. Maybe they're working without pay, or maybe their visas are being held by their trafficker. But they're also providing sexual services.

At the Human Trafficking Institute, we produce an annual report that collects the data on all federal human trafficking cases that are filed in the United States. By far, commercial sex trafficking involving prostitution is the most commonly charged

nationwide year after year, including in NC. This seems to be the one that's most commonly thought of when you hear the term "human trafficking." Cases involve exploiting people for money, and it's usually from a very vulnerable population. Traffickers recognize vulnerability in victims. We see this with young victims, such as runaway children or children in the foster care system. They have no family support. Traffickers recruit them, groom them, and manipulate them into either forced labor or, especially, sex trafficking. This is also true for those who suffer from substance abuse problems. We see that a lot. They're so desperate and bound by their addiction. They find themselves in over their heads with drug debt to their trafficker, and they get forced into that lifestyle.

**I've learned during my time on the commission that people often don't know they are victims or don't identify as such. The commission encourages best practice models when addressing this issue, and one best practice is not arresting victims. It seems evident that potential victims or people at high risk are encountering the court system. Is this what led to or is a reason for a diversion court?**

Ms. Lane: Shockingly, in my experience dealing with victims and working with them over the past several years, that's absolutely correct. Most victims did not know they were being trafficked at the time it was taking place and said, "I just didn't know. I couldn't see what was going on." It wasn't until they were removed from that situation that they realized they were being exploited by the trafficker. They either thought they were in a romantic relationship with the trafficker, or they were so dependent on drugs they were blind to the fact they were being exploited. They still have loyalty to their trafficker, and this is a complex scenario of trauma bonding that's unique to human trafficking. Victims can't just walk away. The hold that the trafficker has on them is very strong—sometimes it's physical abuse, sometimes it's the drug abuse, or sometimes it's extortion, where the trafficker threatens to have the victim deported if they are in illegal status. Or sometimes it would just be familial shame—the trafficker threatens to tell their family they have engaged in things like commercial sex.

What would often happen in these types of situations is the victim would incur crimi-

nal charges because of the trafficker. They'd take the fall for things like drug charges, or theft charges, and they'd take the brunt of these charges to protect the trafficker. What Mr. West and I were seeing in the District Attorney's Office in Cumberland County were multiple defendants who were charged and had a known history of being engaged in the prostitution lifestyle. We would see they were picking up various misdemeanor charges—drug charges, theft charges—but they weren't specifically charged with human trafficking because they were the victims in these cases. It didn't trigger our state's safe harbor law to try to provide them with relief for that charge, but there was definitely a need to get them out of that trafficking lifestyle and back into society.

It was our general policy that we would not charge victims, especially in cases where we saw it could be dangerous to them. For example, if the trafficker finds out that their victim has been charged and thinks they might be cooperating with law enforcement, that could put the victim at risk for harm. Also, if the trafficker bonded them out of jail, what we were seeing is the victim racking up a debt to their trafficker, who would force them to pay off that debt by making them work in the sex trafficking industry. And that's when Cumberland County said, "Hey, let's create a WORTH diversion court," and try to help victims and persons who might be vulnerable to traffickers.

**We are going to hear more detail about the court next, but from your experience, do you believe this model is worthy of replication in other North Carolina counties?**

Ms. Lane: Absolutely. The WORTH Court is such an amazing tool in cases that would ordinarily go undetected or slip through the cracks. It's had a two-fold effect. One, we're serving the victim and preventing, hopefully, potential victims from being pulled into a trafficking ring by meeting them where they are and giving them an avenue to get out of that life. We will offer them services and, if they're interested, they can help themselves break free from that cycle, and if they're not, that's OK, too. What we are also seeing is that when we build up and create a healthy victim, we are also improving our success rate in prosecution. It makes sense that a healthy victim is going to be in a much better position to testify at trial and confront his or her trafficker. So, by serving the victim, we are actu-



ally seeing more success busting the trafficker and saving exponential lives by doing so.

**As you know, many people feel human trafficking is a “big city” crime. If another county is interested in such a program, how many referrals justify starting this initiative?**

Ms. Lane: Anyone who has worked in this industry knows that human trafficking happens everywhere. It has no respect for big cities or small towns. It happens in all communities. We know from the cases that have been charged in Cumberland County that victims are often transported from place to place, and depending on where the demand is, the trafficker will take the victim wherever he can make the most money. A diversion court is beneficial in any jurisdiction. I promise that human trafficking is going on even if it is not immediately recognizable. It is especially important in our more metropolitan areas, where you see the most charges for human trafficking. It makes sense that in those places we will find more victims that could utilize these services.

**Lastly, what stakeholders are necessary to support the program?**

Ms. Lane: No one person can do this alone. You can ask Judge King from Cumberland County, or Billy West, who is the elected district attorney of Cumberland County, or even our public defenders. They will tell you that it takes a village to develop a court like this, and more importantly to make it successful. Watching the changes that we have affected in the lives of the participants that have already been through the program, it's absolutely worth it. Now, personally, as a prosecutor, it took our office, through Mr. West, recognizing that a victim-centered approach is important. It's necessary not just for the well-being of that victim, but for the successful prosecution of the trafficker.

**Thank you so much for taking time with us today. Any closing thoughts?**

Ms. Lane: If anyone is interested in starting a diversion court program in your community, please reach out to the commission or to the WORTH Court directly. It's such an invaluable resource, and each city should really be looking into how they're combatting human trafficking. Be mindful that you're working from a victim-centered approach.

**Benjie, what is the WORTH Court, and can you explain its description and purpose?**

Mr. Hair: WORTH Court is a diversion court set up to manage human trafficking survivor cases by providing supportive care and intervention services. We're a little over two years old, and have had 35 referrals, with 15 dismissals out of those referrals. We've had ten graduates and currently have ten active participants. We're based in Cumberland County, and we're a little bit different from other diversion courts, such as drug courts and veterans' courts, in that we don't meet as frequently as other courts do, and we have outside resources within the community that provide a lot of the supportive services for our participants.

**Who does the court see and how do they get there?**

Mr. Hair: Referrals for the WORTH Court typically come from the district attorney's office and the public defender's office. We do get some referrals from private attorneys. It's basically a system whereby individuals who appear in court—either superior court or district court—are identified as having been a victim of human trafficking, and have charges against them for an offense of some nature. It's recognized that they could benefit from supportive care activity, and that they, as a victim, have not perpetuated a crime, but have been charged with a crime, and they're in court and are seeking some type of relief. Having been charged as a defendant, they are eligible to come to one of the diversion courts. They can be referred to us and we can provide them with the services of WORTH Court. If the participant agrees to come to WORTH Court, and the district attorney's office agrees that the individual's charges will be held back until they have completed WORTH Court, then those charges will be dismissed. The individual will participate in WORTH Court for a period of 12 to 18 months.

**What types of services are most commonly needed for participants or what can be offered?**

Mr. Hair: All participants are involved in case management services. These are services we have designed specifically for human trafficking survivors. The case management is tailored so that the individual can comply with the care plan, which is a core component

of any case management service. There is an assessment done after an intake that helps determine an individual's immediate pending needs, what the long-term needs throughout the 12-to-18-month WORTH court process might be, and what their needs following their participation might be. The services determined by the assessment to be necessary—such as housing, transportation, medical services, substance abuse supportive care services, and mental health services—are set up by the case management entity. We have obtained these services by establishing memorandums of agreement with local community providers, identified through our council members who have relationships with the providers. That's one of the values of setting up the council in the beginning—we became connected to the community and to people willing to work with us, whether we had a dollar to pay them or not. These people were willing to support the WORTH Court and what it stands for.

**Diversion programs have long been used as alternatives to incarceration. Is there anything different about this program as compared to other diversion court models?**

Mr. Hair: Other diversion courts have more frequent interaction with the individual in the court setting, and one of the things we find with human trafficking survivors is that they don't need to be retraumatized. They've been through a lot of trauma and sometimes it's been for a lengthy period of time. So, what we did in the beginning—and this is due to the insight of Judge King—is we had them come into court only every two months. In the interim period they are working with their case management provider, and we get weekly updates on their progress and their attendance to case management and group sessions. Every month we get a cumulative report on their total activity. We're able to keep in touch with what's going on with them, but we, as a different type of court, are not having them appear in court and profess to their progress. By doing so, we hope to reduce stress. A lot of times appearing in court itself is traumatic to an individual. We're trying to help them make the transition from being in a stressful environment to one that's a little more relaxed, while showing them care so they can overcome some of what they have endured.





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**The commission is so glad to have this program in the state. If others want to explore this option in their county, are there a few key points of major significance they should know?**

Mr. Hair: The program was conceptualized and put into practice in early 2019. We became active in the fall of 2019, so we have been providing direct services for about two years. During that time, we have been tracking the successes and challenges of putting this type of court in place. We're a little bit different, and with that we've had to adjust the court system to our needs. We've all had to do a little give and take. In doing so, we have noted what we feel are the best practices. Through that process, I came up with an outline of best practices with 12 categories of how to put this type of court together, taking into account the administrative components, the judicial components, and the sustainability of this type of program. We also considered the strategic planning piece, taking into account what services we needed to have in place, and our desire to reduce the trauma of those services.

Out of the 12 categories, we came up with four key areas that we determined any kind of court would need to consider when starting a new WORTH-type court. One of those is how to integrate that court into the existing court system, with as little stress as possible. The next one would be the administrative oversight. How are you going to address the administrative function? Such as, if you are awarded money, how do you receive that money and where are those funds going to be placed? More than likely, this court will not be a 501(c) nonprofit. Someone has to manage the funds. The third area is operations and programmatic development. How are you going to account for your operations, and how

are you going to look at the development of the court as it's growing, as it's going about its business? The concept of "build it and they shall come" sometimes happens. Right away we had a lot of referrals, and we had to figure out how we were going to manage everything. The fourth area is collecting data. I started right away setting up my own system for collecting data and reporting out that data, so we had something to show for what we were doing. A little over a year into the process, I realized there were some key data elements I was not collecting that needed to be reported—data that would help us understand a little more about the work we're doing, and tell others about it. We have best practices we can share with any other judicial district in this state looking at implementing a similar type of court, and we are willing to share it.

#### **WORTH stands for We Overcome Recidivism Through Healing. Why did the planning group choose to use this name?**

Mr. Hair: Judge King came up with the name. It reflects the "WE," meaning that we're a team, and we like to think of ourselves as a team. We constantly strive to overcome recidivism, which is so much a part of the lives of the people with whom we work. We do this through healing, and that healing is a constant effort, and it happens through many different methods. It may mean physical healing, it may mean mental healing, it may be that the victim has to define how they see themselves and completely reinvent that definition.

WORTH also, as a term, signifies that the person has recognized their value. This is a very appropriate term for individuals who are survivors, and it is a term that has proven to be very appealing to others. It's not offen-

sive and it's not something that makes people feel uncomfortable. Each day, WORTH Court has done good work in our community. And we see in every one of the individuals with whom we've worked the daily struggle to overcome.

One of the things I can say about the ten individuals who have graduated—to date, none of them has relapsed. That's one of the things I'm most proud of with this program. One of the points I will make about our case management efforts and this term "WORTH," is that when an individual completes the program and graduates, the services and the supportive care services are still there for them. Those services will remain for as long necessary to continue growing and healing.

#### **Thank you so much for taking time with us today. Any closing thoughts?**

Mr. Hair: This has been a great opportunity to review our practices, and sometimes we take our best practices and make them better. We are willing to share with other judicial districts what our experience has been, and we're willing to mentor folks who wish to entertain the idea and implement a WORTH Court program. ■

*Human trafficking is a crime that involves all disciplines, communities, and systems. The courts play a major role in identifying and addressing human trafficking. If you believe you are a victim or know a victim, there is help available. Call the National Human Trafficking Hotline at 1-888-373-7888 or text BeFree. For more information about the WORTH Court or other human trafficking programs, please visit the NC Human Trafficking Commission's website, [nccourts.gov/commissions/human-trafficking-commission](http://nccourts.gov/commissions/human-trafficking-commission), or call (919) 890-1424.*

# CLE Board Proposes Sweeping Changes to CLE Rules

BY PETER BOLAC

**O**n March 12, 2022, the North Carolina State Bar's Board of Continuing Legal Education (CLE Board) approved large-scale amendments to its rules following a multi-year review process. The CLE Board believes that these proposed changes will have the combined effect of providing more flexibility for lawyers, while also improving efficiency for the CLE program.



This executive summary details the key changes. The full text of proposed rule changes follows this summary. Lawyers are encouraged to read both the summary and the full-text version of the proposed amendments.

The rules of the Continuing Legal Education program were originally adopted by Order of the Supreme Court in 1987. While various minor changes have been made in the 35 years since adoption, the general structure of the CLE program remains unchanged since its inception. Requirements that once made practical sense (e.g., the Annual Report Form requirement), and administrative tasks that were easier to accomplish when there were fewer licensed lawyers (e.g., collecting fees based on credit

hours), have become both inefficient and unnecessary.

Beginning in 2020, the Board of Continuing Legal Education undertook an all-encompassing review of its rules to create a more efficient and flexible CLE program. The review included meetings with State Bar CLE directors in other states, where board members were able to ask questions and learn what works best around the country. The review process was conducted transparently (meetings are available on the State Bar's YouTube page), and the board received regular feedback from CLE providers, including the North Carolina Bar Association.

The proposed rule changes were presented to the North Carolina State Bar Council in April and were subsequently approved for

publication. The CLE Board and the council are very interested in receiving comments from both lawyers and sponsors. In addition to publication in this edition of the *Journal*, we intend to hold multiple question and answer sessions for lawyers, and we are available to meet with bar groups and other professional associations over the next quarter. The CLE Board, along with the council, will review any comments received. Following the comment period, which ends July 1, if no substantive changes are needed, the rules will come back before the State Bar Council for adoption. The adopted rules will then be sent to the Supreme Court for its review and approval. It is the board's desire that these new rules will be effective beginning with the 2023 CLE year.

# KEY CHANGES TO CLE RULES

## Increase Reporting Period



Three-year reporting period for lawyers to complete their CLE requirements. Lawyers split into three reporting groups.

**Reason:** Gives lawyers more flexibility to take courses at their own pace and eases administrative burden on CLE staff.

## No “Grace Period”



The CLE year will run from March 1 through the end of February.

**Reason:** Most lawyers do not realize that the CLE year ends in December, and that January/February is meant to be a grace period. A clean 12-month CLE year is more efficient for everyone.

## Eliminate Annual Report



The requirement to file an Annual Report is eliminated.

**Reason:** If a lawyer’s CLE record shows compliance with the requirements, a filing requirement is unnecessary.

## No Carry-Over Credit



Carry-over credit from one period to another is prohibited.

**Reason:** The trade-off for a three-year reporting period is eliminating carry-over credit. This will also increase administrative efficiency.

## Change Fee Structure



Changes from a \$3.50/hour fee to program application fees and an annual CLE attendance fee (likely \$25) paid during the membership dues process.

**Reason:** Improves efficiency for the CLE program, reduces a lawyer’s annual cost of attendance (currently \$42), and eliminates “bill collecting.”

## Improved Enforcement



Lawyers who fail to complete their hours requirements will be subject to additional compliance fees and a more streamlined suspension process.

**Reason:** With additional flexibility comes increased individual responsibility and accountability.

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## Additional Information

- As part of the 36-hour requirement over three years, lawyers must complete at least:
  - o 6 ethics hours (professional responsibility, professionalism, or social responsibility);
  - o 1 professional well-being and impairment (PWI) hour; and
  - o 1 technology training hour.
- The CLE Board intends to create staggered reporting periods so that roughly one-third of lawyers are reporting each year. This will require a one-time modification to the rules where one-third of lawyers have a one-year/12-hour requirement and one-third have a two-year/24-hour requirement before starting the three-year reporting period.
- Program application fees will be based on the number of credit hours sought for approval and will be due upon submission of the program application.
- Courses offered for free will have a reduced application fee and will be searchable in the CLE Course Directory.
- On-demand programs will be approved for three years and thereafter may be renewed annually as long as the program continues to meet accreditation standards.
- Eliminating carry-over credit may frustrate lawyers who like to stay ahead on their requirements. The reasons for eliminating carry-over credit include:
  - o A three-year reporting period provides the flexibility and additional time that carry-over credit now provides.
  - o If carry-over credit was permitted (36-hours, for example) then lawyers could theoretically take 72 hours in year one of their reporting period and not have to complete another CLE program for eight or nine years. This is not a good way to ensure continued competency in the profession.
  - o The elimination of carry-over credit improves administrative efficiency, and the board believes it is an acceptable tradeoff for the additional flexibility provided to lawyers in these changes.
- The additional credit for teaching CLE courses (6 hours for every hour taught) remains the same.
- The substance abuse and mental health program definition is modernized and is now called professional well-being and impairment (PWI).
- A new type of ethics program called “social responsibility” is created and is defined as “a program, directly related to the practice of law, devoted to education about diversity, in-

clusion, bias, or equal access to justice.” The program is not mandatory. Lawyers can choose to take social responsibility programs as part of their 6-hour ethics requirement.

- Exemptions will be claimed during the annual membership dues renewal process and will be effective for one year. Exempt lawyers will not be assessed an annual attendance fee.
- To encourage and recognize service to the profession, the CLE Board recommends that State Bar councilors be exempt from CLE requirements in the same manner as members of the Board of Law Examiners.
- There will be increased penalties for late compliance, and a faster process for administrative suspensions due to non-compliance. Notices to Show Cause and Orders of Suspension will operate in tandem without the need for additional council action.
- The designation of “registered sponsor” is eliminated.
- Sponsors failing to timely submit attendance reports will be charged a late reporting fee and also prohibited from having new courses approved for credit until the report is filed.
- The CLE Board intends to maintain its historical funding in support of the Chief Justice’s Commission on Professionalism (CJCP) and the Equal Access to Justice Commission (EAJC).
- Specialists should note that these changes do NOT impact the CLE requirements for obtaining and maintaining specialty certification through the Board of Legal Specialization. Existing specialists and lawyers intending to apply for specialty certification in their practice area should consult the administrative rules governing their specific specialty for a full list of CLE requirements associated with specialty certification (including annual, cumulative, and content requirements).

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## Contact Us

Please contact Peter Bolac, assistant executive director of the North Carolina State Bar and director of the Board of Continuing Legal Education, at [PBolac@ncbar.gov](mailto:PBolac@ncbar.gov) with your questions and comments. Comments may also be sent to [ethicscomments@ncbar.gov](mailto:ethicscomments@ncbar.gov).

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## Proposed Amendments to Rules of the Standing Committee of the North Carolina State Bar

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Contin-

uing Legal Education Program

### .1501 Scope, Purpose, and Definitions

#### (a) Scope.

Except as provided herein, these rules shall apply to every active member licensed by the North Carolina State Bar.

#### (b) Purpose.

The purpose of these continuing legal education rules is to assist lawyers licensed to practice and practicing law in North Carolina in achieving and maintaining professional competence for the benefit of the public whom they serve. The North Carolina State Bar, under Chapter 84 of the General Statutes of North Carolina, is charged with the responsibility of providing rules of professional conduct and with disciplining lawyers ~~attorneys~~ who do not comply with such rules. The ~~Revised~~ Rules of Professional Conduct adopted by the North Carolina State Bar and approved by the Supreme Court of North Carolina require that lawyers adhere to important ethical standards, including that of rendering competent legal services in the representation of their clients.

At a time when all aspects of life and society are changing rapidly or becoming subject to pressures brought about by change, laws and legal principles are also in transition (through additions to the body of law, modifications, and amendments) and are increasing in complexity. One cannot render competent legal services without continuous education and training.

The same changes and complexities, as well as the economic orientation of society, result in confusion about the ethical requirements concerning the practice of law and the relationships it creates. The data accumulated in the discipline program of the North Carolina State Bar argue persuasively for the establishment of a formal program for continuing and intensive training in professional responsibility and legal ethics.

~~It has also become clear that in order to render legal services in a professionally responsible manner, a lawyer must be able to manage his or her law practice competently. Sound management practices enable lawyers to concentrate on their clients’ affairs while avoiding the ethical problems which can be caused by disorganization.~~

It is in response to such considerations that the North Carolina State Bar has adopted these minimum continuing legal education requirements. The purpose of these min-



imum continuing legal education requirements is the same as the purpose of the ~~Revised~~ Rules of Professional Conduct themselves—to ensure that the public at large is served by lawyers who are competent and maintain high ethical standards.

(c) Definitions.

(1) “Active member” shall include any person who is licensed to practice law in the state of North Carolina and who is an active member of the North Carolina State Bar.

(2) “Administrative Committee” shall mean the Administrative Committee of the North Carolina State Bar.

(3) “Approved program” shall mean a specific, individual educational program approved as a continuing legal education program under these rules by the Board of Continuing Legal Education.

(4) “Board” means the Board of Continuing Legal Education created by these rules.

(5) “Continuing legal education” or “CLE” is any legal, judicial or other educational program accredited by the ~~b~~Board. Generally, CLE will include educational programs designed principally to maintain or advance the professional competence of lawyers and/or to expand an appreciation and understanding of the professional responsibilities of lawyers.

(6) “Council” shall mean the North Carolina State Bar Council.

(7) “Credit hour” means an increment of time of 60 minutes which may be divided into segments of 30 minutes or 15 minutes, but no smaller.

(8) “Ethics” shall mean programs or segments of programs devoted to (i) professional responsibility, (ii) professionalism, or (iii) social responsibility as defined in Rules .1501(c)(14), (15), and (20) below.

(9) “Inactive member” shall mean a member of the North Carolina State Bar who is on inactive status.

(10) “In-house continuing legal education” shall mean courses or programs offered or conducted by law firms, either individually or in connection with other law firms, corporate legal departments, or similar entities primarily for the education of their members. ~~The board may exempt from this definition those programs which it finds~~

~~(A) to be conducted by public or quasi-public organizations or associations for~~

~~the education of their employees or members;~~

~~(B) to be concerned with areas of legal education not generally offered by sponsors of programs attended by lawyers engaged in the private practice of law.~~

(11) A “newly admitted active member” is one who becomes an active member of the North Carolina State Bar for the first time, ~~has been reinstated, or has changed from inactive to active status.~~

(12) “On demand” program shall mean an accredited educational program accessed via the internet that is available at any time on a provider’s website and does not include live programming.

(13) “Online” program shall mean an accredited educational program accessed through a computer or telecommunications system such as the internet and can include simultaneously broadcast and on demand programming.

~~(13) “Participatory CLE” shall mean programs or segments of programs that encourage the participation of attendees in the educational experience through, for example, the analysis of hypothetical situations, role playing, mock trials, roundtable discussions, or debates.~~

(14) “Professional responsibility” shall mean those programs or segments of programs devoted to (a) the substance, underlying rationale, and practical application of the Rules of Professional Conduct; (b) the professional obligations of the lawyer to the client, the court, the public, and other lawyers; or (c) moral philosophy and ethical decision-making in the context of the practice of law, ~~and d) the effects of stress, substance abuse and chemical dependency, or debilitating mental conditions on a lawyer’s professional responsibilities and the prevention, detection, treatment, and etiology of stress, substance abuse, chemical dependency, and debilitating mental conditions. This definition shall be interpreted consistent with the provisions of Rule .1501(c)(4) or (6) above.~~

(15) “Professionalism” programs are programs or segments of programs devoted to the identification and examination of, and the encouragement of adherence to, non-mandatory aspirational standards of professional conduct which transcend the requirements of the Rules of Professional Conduct. Such programs address principles of competence and dedication to the service

of clients, civility, improvement of the justice system, diversity of the legal profession and clients, advancement of the rule of law, service to the community, and service to the disadvantaged and those unable to pay for legal services.

~~(16) “Registered sponsor” shall mean an organization that is registered by the board after demonstrating compliance with the accreditation standards for continuing legal education programs as well as the requirements for reporting attendance and remitting sponsor fees for continuing legal education programs.~~

~~(17) “Rules” shall mean the provisions of the continuing legal education rules established by the Supreme Court of North Carolina. (Section .1500 of this subchapter).~~

~~(18) “Sponsor” is any person or entity presenting or offering to present one or more continuing legal education programs, whether or not an accredited sponsor.~~

(18) “Professional well-being and impairment” (PWI) is a program focused on the relationship between stressors inherent in the profession, impairment, competence, and professionalism. Topics may include the prevention, detection, treatment, and etiology of a range of substance use and mental health conditions, as well as resources available for assistance and strategies for improving resilience and well-being. Experiential exercises, practices, or demonstrations of tools for improving resilience and well-being are permitted provided they do not exceed a combined total of 20 minutes in any 60-minute presentation.

(19) “Technology training” shall mean a program, or a segment of a program, devoted to education on information technology (IT) or cybersecurity (see N.C. Gen. Stat. § 143B-1320(a)(11), or successor statutory provision, for a definition of “information technology”), including education on an information technology product, device, platform, application, or other tool, process, or methodology; that is specific or uniquely suited to the practice of law. A technology training program must have the primary objective of enhancing a lawyer’s proficiency as a lawyer. To be eligible for CLE accreditation as a technology training program, the program must satisfy the accreditation standards in Rule .1519 and the course content requirements in Rule .1602(e) of this subchapter.

~~(20) "Year" shall mean calendar year.~~

~~(20) "Social responsibility" programs shall mean programs, directly related to the practice of law, devoted to education about diversity, inclusion, bias, or equal access to justice.~~

#### **.1502 Jurisdiction: Authority**

The Council of the North Carolina State Bar hereby establishes the Board of Continuing Legal Education (~~b~~Board) as a standing committee of the ~~e~~Council, which ~~b~~Board shall have authority to establish regulations governing a continuing legal education program ~~and a law practice assistance program for attorneys~~ lawyers licensed to practice law in this state.

#### **.1503 Operational Responsibility**

The responsibility for operating the continuing legal education program ~~and the law practice assistance program~~ shall rest with the ~~b~~Board, subject to the statutes governing the practice of law, the authority of the ~~e~~Council, and the rules of governance of the ~~b~~Board.

#### **.1504 Size of Board**

The ~~b~~Board shall have nine members, all of whom must be ~~attorneys~~ lawyers in good standing and authorized to practice in the state of North Carolina.

#### **.1505 Lay Participation**

The ~~b~~Board shall have no members who are not licensed ~~attorneys~~ lawyers.

#### **.1506 Appointment of Members; When; Removal**

The members of the ~~b~~Board shall be appointed by the ~~e~~Council. ~~The first members of the board shall be appointed as of the quarterly meeting of the council following the creation of the board. Thereafter, members shall be appointed annually as of the same quarterly meeting.~~ Vacancies occurring by reason of death, resignation, or removal shall be filled by appointment of the ~~e~~Council at the next quarterly meeting following the event giving rise to the vacancy, and the person so appointed shall serve for the balance of the vacated term. Any member of the ~~b~~Board may be removed at any time by an affirmative vote of a majority of the members of the ~~e~~Council in session at a regularly called meeting.

#### **.1507 Term of Office**

Each member who is appointed to the ~~b~~Board shall serve for a term of three years beginning as of the first day of the month fol-

lowing the date on which the appointment is made by the ~~e~~Council. ~~See, however, Rule .1508 of this Section.~~

#### **.1508 Staggered Terms**

~~It is intended that m~~Members of the ~~b~~Board shall be elected to staggered terms such that three members are appointed in each year. ~~Of the initial board, three members shall be elected to terms of one year, three members shall be elected to terms of two years, and three members shall be elected to terms of three years. Thereafter, three members shall be elected each year.~~

#### **.1509 Succession**

Each member of the ~~b~~Board shall be entitled to serve for one full three-year term and to succeed himself or herself for one additional three-year term. Thereafter, no person may be reappointed without having been off the ~~b~~Board for at least three years.

#### **.1510 Appointment of Chairperson**

The chairperson of the ~~b~~Board shall be appointed from time to time as necessary by the ~~e~~Council. The term of such individual as chairperson shall be one year. The chairperson may be reappointed thereafter during his or her tenure on the ~~b~~Board. The chairperson shall preside at all meetings of the ~~b~~Board, shall prepare and present to the ~~e~~Council the annual report of the ~~b~~Board, and generally shall represent the ~~b~~Board in its dealings with the public.

#### **.1511 Appointment of Vice-Chairperson**

The vice-chairperson of the ~~b~~Board shall be appointed from time to time as necessary by the ~~e~~Council. The term of such individual as vice-chairperson shall be one year. The vice-chairperson may be reappointed thereafter during tenure on the ~~b~~Board. The vice-chairperson shall preside at and represent the ~~b~~Board in the absence of the chairperson and shall perform such other duties as may be assigned to him or her by the chairperson or by the ~~b~~Board.

#### **.1512 Source of Funds**

(a) Funding for the program carried out by the ~~b~~Board shall come from ~~sponsor's fees and attendee's fees~~ an annual CLE attendance fee and program application fees as provided below, as well as from duly assessed penalties for noncompliance and from reinstatement fees.

(1) Annual CLE Attendance Fee – All members, except those who are exempt from these requirements under Rule .1517, shall pay an annual CLE fee in an amount set by the Board and approved by the Council. Such fee shall accompany the member's annual membership fee. Annual CLE fees are non-refundable. Registered sponsors located in North Carolina (for programs offered in or outside North Carolina), registered sponsors not located in North Carolina (for programs offered in North Carolina), and all other sponsors located in or outside of North Carolina (for programs offered in North Carolina) shall, as a condition of conducting an approved program, agree to remit a list of North Carolina attendees and to pay a fee for each active member of the North Carolina State Bar who attends the program for CLE credit. The sponsor's fee shall be based on each credit hour of attendance, with a proportional fee for portions of a program lasting less than an hour. The fee shall be set by the board upon approval of the council. Any sponsor, including a registered sponsor, that conducts an approved program which is offered without charge to attendees shall not be required to remit the fee under this section. Attendees who wish to receive credit for attending such an approved program shall comply with paragraph (a)(2) of this rule.

(2) Program Application Fee – The sponsor of a CLE program shall pay a program application fee due when filing an application for program accreditation pursuant to Rule .1520(b). Program application fees are non-refundable. A member submitting an application for a previously unaccredited program for individual credit shall pay a reduced fee. The board shall fix a reasonably comparable fee to be paid by individual attorneys who attend for CLE credit approved continuing legal education programs for which the sponsor does not submit a fee under Rule .1512(a)(1) above. Such fee shall accompany the member's annual affidavit. The fee shall be set by the board upon approval of the council.

(3) Fee Review – The Board will review the level of fees at least annually and adjust the fees as necessary to maintain adequate finances for prudent operation of the Board in a nonprofit manner. The Council shall annually review the assessments for the Chief Justice's Commission on Profession-

alism and the North Carolina Equal Access to Justice Commission and adjust them as necessary to maintain adequate finances for the operation of the commissions.

(4) Uniform Application and Financial Responsibility – Fees shall be applied uniformly without exceptions or other preferential treatment for a sponsor or member.

(b) Funding for a law practice assistance program shall be from user fees set by the board upon approval of the council and from such other funds as the council may provide.

(c) No Refunds for Exemptions and Record Adjustments.

(1) Exemption Claimed. If a credit hour of attendance is reported to the board, the fee for that credit hour is earned by the board regardless of an exemption subsequently claimed by the member pursuant to Rule .1517 of this subchapter. No paid fees will be refunded and the member shall pay the fee for any credit hour reported on the annual report form for which no fee has been paid at the time of submission of the member's annual report form.

(2) Adjustment of Reported Credit Hours. When a sponsor is required to pay the sponsor's fee, there will be no refund to the sponsor or to the member upon the member's subsequent adjustment, pursuant to Rule .1522(a) of this subchapter, to credit hours reported on the annual report form. When the member is required to pay the attendee's fee, the member shall pay the fee for any credit hour reported after any adjustment by the member to credit hours reported on the annual report form.

#### .1513 Fiscal Responsibility

All funds of the bBoard shall be considered funds of the North Carolina State Bar and shall be administered and disbursed accordingly.

(a) Maintenance of Accounts: Audit. –The North Carolina State Bar shall maintain a separate account for funds of the bBoard such that such funds and expenditures therefrom can be readily identified. The accounts of the bBoard shall be audited on an annual basis in connection with the audits of the North Carolina State Bar.

(b) Investment Criteria. –The funds of the bBoard shall be handled, invested and reinvested in accordance with investment policies adopted by the eCouncil for the handling of dues, rents, and other revenues received by the North Carolina State Bar in carrying out its

official duties.

(c) Disbursement. –Disbursement of funds of the bBoard shall be made by or under the direction of the secretary ~~treasurer~~ of the North Carolina State Bar pursuant to authority of the eCouncil. The members of the bBoard shall serve on a voluntary basis without compensation, but may be reimbursed for the reasonable expenses incurred in attending meetings of the bBoard or its committees.

(d) All revenues resulting from the CLE program, ~~including fees received from attendees and sponsors, late filing penalties, late compliance fees, reinstatement fees, and interest on a reserve fund~~ shall be applied first to the expense of administration of the CLE program including an adequate reserve fund; provided, however, that a portion of each ~~sponsor or attendee fee, annual CLE fee and program application fee,~~ in an amount to be determined by the eCouncil, shall be paid to the Chief Justice's Commission on Professionalism and to the North Carolina Equal Access to Justice Commission for administration of the activities of these commissions. Excess funds may be expended by the eCouncil on lawyer competency programs approved by the eCouncil.

#### .1514 Meetings

The Board shall meet at least annually. ~~an annual meeting of the board shall be held in October of each year in connection with the annual meeting of the North Carolina State Bar.~~ The bBoard by resolution may set regular meeting dates and places. Special meetings of the bBoard may be called at any time upon notice given by the chairperson, the vice-chairperson, or any two members of the bBoard. Notice of meeting shall be given at least two days prior to the meeting by mail, electronic mail, telegram, facsimile transmission or telephone. A quorum of the bBoard for conducting its official business shall be a majority of the members serving at a particular time.

#### .1515 Annual Report

The bBoard shall prepare at least annually a report of its activities and shall present the same to the eCouncil ~~one month~~ prior to its annual meeting.

#### .1516 Powers, Duties, and Organization of the Board

(a) The bBoard shall have the following powers and duties:

(1) to exercise general supervisory authority

over the administration of these rules;

(2) to adopt and amend regulations consistent with these rules with the approval of the eCouncil;

(3) to establish an office or offices and to employ such persons as the bBoard deems necessary for the proper administration of these rules, and to delegate to them appropriate authority, subject to the review of the eCouncil;

(4) to report annually on the activities and operations of the bBoard to the eCouncil and make any recommendations for changes in the fee amounts, rules, or methods of operation of the continuing legal education program; and

(5) to submit an annual budget to the eCouncil for approval and to ensure that expenses of the bBoard do not exceed the annual budget approved by the eCouncil; ~~(6) to administer a law office assistance program for the benefit of lawyers who request or are required to obtain training in the area of law office management.~~

(b) The bBoard shall be organized as follows:

(1) Quorum. ~~Five members~~ A majority of members serving shall constitute a quorum of the bBoard.

(2) The Executive Committee. –~~The Board may establish an executive committee.~~ The executive committee of the bBoard shall be comprised of the chairperson, ~~a the~~ the vice-chairperson, ~~elected by the members of the board,~~ and a member to be appointed by the chairperson. Its purpose is to conduct all necessary business of the bBoard that may arise between meetings of the full bBoard. In such matters it shall have complete authority to act for the bBoard.

(3) Other Committees. –The chairperson may appoint committees as established by the bBoard for the purpose of considering and deciding matters submitted to them by the bBoard.

(c) Appeals. –Except as otherwise provided, the bBoard is the final authority on all matters entrusted to it under ~~Section .1500 and Section .1600 of~~ this subchapter. Therefore, any decision by a committee of the bBoard pursuant to a delegation of authority may be appealed to the full bBoard and will be heard by the bBoard at its next scheduled meeting. A decision made by the staff pursuant to a delegation of authority may also be reviewed by the full bBoard but should first be appealed to any committee of the bBoard having jurisdic-

tion on the subject involved. All appeals shall be in writing. The ~~b~~Board has the discretion to, but is not obligated to, grant a hearing in connection with any appeal regarding the accreditation of a program.

#### **.1517 Exemptions**

(a) Notification of Board. To qualify for an exemption, ~~for a particular calendar year, a member shall notify the bBoard of the exemption in~~ during the annual membership renewal process or in another manner as directed by the Board ~~report for that calendar year sent to the member pursuant to Rule .1522 of this subchapter.~~ All active members who are exempt are encouraged to attend and participate in legal education programs.

(b) Government Officials and Members of Armed Forces. The governor, the lieutenant governor, and all members of the council of state, members of the United States Senate, members of the United States House of Representatives, members of the North Carolina General Assembly, full-time principal chiefs and vice-chiefs of any Indian tribe officially recognized by the United States or North Carolina state governments, and members of the United States Armed Forces on full-time active duty are exempt from the requirements of these rules for any calendar year in which they serve some portion thereof in such capacity.

(c) Judiciary and Clerks. Members of the state judiciary who are required by virtue of their judicial offices to take ~~an average of (twelve) 12 or more hours of~~ continuing judicial or other legal education ~~annually~~ and all members of the federal judiciary are exempt from the requirements of these rules for any calendar year in which they serve some portion thereof in such judicial capacities. Additionally, A full-time law clerk for a member of the federal or state judiciary is exempt from the requirements of these rules for any calendar year in which the clerk serves some portion thereof in such capacity, provided, however, that

(1) the exemption shall not exceed two consecutive calendar years; and, ~~further provided, that~~

(2) the clerkship begins within one year after the clerk graduates from law school or passes the bar examination for admission to the North Carolina State Bar whichever occurs later.

(d) Nonresidents. Any active member residing outside of North Carolina who does not practice in North Carolina for at least six

~~(6)~~ consecutive months and does not represent North Carolina clients on matters governed by North Carolina law shall be exempt from the requirements of these rules.

(e) Law Teachers. An exemption from the requirements of these rules shall be given to any active member who does not practice in North Carolina or represent North Carolina clients on matters governed by North Carolina law and who is:

(1) A full-time teacher at the School of Government ~~(formerly the Institute of Government)~~ of the University of North Carolina;

(2) A full-time teacher at a law school in North Carolina that is accredited by the American Bar Association; or

(3) A full-time teacher of law-related courses at a graduate level professional school accredited by its respective professional accrediting agency.

(f) Special Circumstances Exemptions. The ~~b~~Board may exempt an active member from the continuing legal education requirements for a period of not more than one year at a time upon a finding by the ~~b~~Board of special circumstances unique to that member constituting undue hardship or other reasonable basis for exemption, ~~or for a longer period upon a finding of a permanent disability.~~

(g) Pro Hac Vice Admission. Nonresident ~~attorneys~~ lawyers from other jurisdictions who are temporarily admitted to practice in a particular case or proceeding pursuant to the provisions of G.S. 84-4.1 shall not be subject to the requirements of these rules.

(h) Senior Status Exemption. The ~~b~~Board may exempt an active member from the continuing legal education requirements if

(1) the member is sixty-five years of age or older; and

(2) the member does not render legal advice to or represent a client unless ~~the member associates with~~ under the supervision of another active member who assumes responsibility for the advice or representation.

(i) Bar Examiners and State Bar Councilors. Members of the North Carolina Board of Law Examiners and councilors on the North Carolina State Bar Council are exempt from the requirements of these rules for any calendar year in which they serve some portion thereof in such capacity. CLE Record During Exemption Period. During a calendar year in which the records of the board indicate that an active member is exempt from the requirements of

~~these rules, the board shall not maintain a record of such member's attendance at accredited continuing legal education programs. Upon the termination of the member's exemption, the member may request carry over credit up to a maximum of twelve (12) credits for any accredited continuing legal education program attended during the calendar year immediately preceding the year of the termination of the exemption. Appropriate documentation of attendance at such programs will be required by the board.~~

~~(j) Permanent Disability. Attorneys who have a permanent disability that makes attendance at CLE programs inordinately difficult may file a request for a permanent substitute program in lieu of attendance and shall therein set out continuing legal education plans tailored to their specific interests and physical ability. The board shall review and approve or disapprove such plans on an individual basis and without delay.~~

~~(k) Application for Substitute Compliance and Exemptions. Other requests for substitute compliance, partial waivers, and/or other exemptions for hardship or extenuating circumstances may be granted by the bBoard on an annual yearly basis upon written application of the attorney member.~~

~~(l) Bar Examiners. Credit is earned through service as a bar examiner of the North Carolina Board of Law Examiners. The board will award 12 hours of CLE credit for the preparation and grading of a bar examination by a member of the North Carolina Board of Law Examiners.~~

(k) Effect of Annual Exemption on CLE Requirements. Exemptions are granted on an annual basis and must be claimed each year. An exempt member's new reporting period will begin on March 1 of the year for which an exemption is not granted. No credit from prior years may be carried forward following an exemption.

(l) Exemptions from Professionalism Requirement for New Members.

(1) Licensed in Another Jurisdiction. A newly admitted member who is licensed by a United States jurisdiction other than North Carolina for five or more years prior to admission to practice in North Carolina is exempt from the PNA program requirement and must notify the Board of the exemption during the annual membership renewal process or in another manner as directed by the Board.

(2) Inactive Status. A newly admitted



member who is transferred to inactive status in the year of admission to the North Carolina State Bar is exempt from the PNA program requirement but, upon the entry of an order transferring the member back to active status, must complete the PNA program in the reporting period that the member is subject to the requirements set forth in Rule .1518(b) unless the member qualifies for another exemption in this rule.

(3) Other Rule .1517 Exemptions. A newly admitted active member who qualifies for an exemption under Rules .1517(a) through (i) of this subchapter shall be exempt from the PNA program requirement during the period of the Rule .1517 exemption. The member shall notify the Board of the exemption during the annual membership renewal process or in another manner as directed by the Board. The member must complete the PNA program in the reporting period the member no longer qualifies for the Rule .1517 exemption.

#### **.1518 Continuing Legal Education Requirements**

(a) Reporting period. Except as provided in Paragraphs (1) and (2) below, the reporting period for the continuing legal education requirements shall be three years, beginning March 1 through the last day of February:

(1) New admittees. The reporting period for newly admitted members shall begin on March 1 of the calendar year of admission.

(2) Reinstated members.

(A) A member who is transferred to and subsequently reinstated from inactive or suspended status before the end of the reporting period in effect at the time of the original transfer shall retain the member's original reporting period and these Rules shall be applied as though the transfer had not occurred.

(B) Except as provided in Subparagraph (A) above, the first reporting period for reinstated members shall be the same as if the member was newly admitted pursuant to paragraph (1) above.

(ab) Annual Hours Requirement. Each active member subject to these rules shall complete 1236 hours of approved continuing legal education during each calendar year beginning January 1, 1988 reporting period, as provided by these rules, and the regulations adopted

thereunder.

Of the 1236 hours:

(1) at least 26 hours shall be devoted to the areas of professional responsibility or professionalism or any combination thereof ethics as defined in Rule .1501(c)(8) of this subchapter;

(2) at least 1 hour shall be devoted to technology training as defined in Rule .1501(c)(17)(19) of this subchapter. This credit must be completed in at least 1-hour increments; and further explained in Rule .1602(e) of this subchapter; and

(3) effective January 1, 2002, at least once every three calendar years, each member shall complete an hour of continuing legal education at least 1 hour shall be devoted to programs instruction on professional well-being and impairment substance abuse and debilitating mental conditions as defined in Rule .1501(c)(18) of this subchapter. 1602 (a). This credit must be completed in at least 1-hour increments. This hour shall be credited to the annual 12-hour requirement but shall be in addition to the annual professional responsibility/professionalism requirement. To satisfy the requirement, a member must attend an accredited program on substance abuse and debilitating mental conditions that is at least one hour long.

(bc) No Carryover Credit. Members may not carry over credit hours from one reporting period to the next reporting period. carry over up to 12 credit hours earned in one calendar year to the next calendar year, which may include those hours required by paragraph (a)(1) above. Additionally, a newly admitted active member may include as credit hours which may be carried over to the next succeeding year any approved CLE hours earned after that member's graduation from law school.

(d) The Board shall determine the process by which credit hours are allocated to lawyers' records to satisfy deficits from prior reporting years. The allocation shall be applied uniformly to the records of all affected lawyers and may not be appealed by an affected lawyer.

(ec) Professionalism Requirement for New Members. Except as provided in Rule .1517(l), paragraph (d)(1), each newly admitted active member admitted to of the North Carolina State Bar after January 1, 2011, must complete the an approved North Carolina State Bar Professionalism for New Attorneys Pprogram (PNA Pprogram) as described in Rule .1525 in during the member's first reporting

period. year the member is first required to meet the continuing legal education requirements as set forth in Rule .1526(b) and (c) of this subchapter. It is strongly recommended that newly admitted members complete the PNA program within their first year of admission. CLE credit for the PNA Pprogram shall be applied to the annual mandatory continuing legal education requirements set forth in pParagraph (ab) above.

(1) Content and Accreditation. The State Bar PNA Program shall consist of 12 hours of training in subjects designated by the State Bar including, but not limited to, professional responsibility, professionalism, and law office management. The chairs of the Ethics and Grievance Committees, in consultation with the chief counsel to those committees, shall annually establish the content of the program and shall publish the required content on or before January 1 of each year. To be approved as a PNA Program, the program must be provided by a sponsor registered under Rule .1603 of this subchapter and a sponsor must satisfy the annual content requirements, and submit a detailed description of the program to the board for approval at least 45 days prior to the program. A registered sponsor may not advertise a PNA Program until approved by the board. PNA Programs shall be specially designated by the board and no program that is not so designated shall satisfy the PNA Program requirement for new members.

(2) Timetable and Partial Credit. The PNA Program shall be presented in two six-hour blocks (with appropriate breaks) over two days. The six-hour blocks do not have to be attended on consecutive days or taken from the same provider; however, no partial credit shall be awarded for attending less than an entire six-hour block unless a special circumstances exemption is granted by the board. The board may approve an alternative timetable for a PNA program upon demonstration by the provider that the alternative timetable will provide an enhanced learning experience or for other good cause; however, no partial credit shall be awarded for attending less than the entire 12-hour program unless a special circumstances exemption is granted by the board.

(3) Online and Prerecorded Programs. The PNA Program may be distributed over the Internet by live web streaming (webcasting) but no part of the program may be taken

online (via the Internet) on demand. The program may also be taken as a prerecorded program provided the requirements of Rule .1604(d) of this subchapter are satisfied and at least one hour of each six hour block consists of live programming.

**(d) Exemptions from Professionalism Requirement for New Members.**

(1) **Licensed in Another Jurisdiction.** A member who is licensed by a United States jurisdiction other than North Carolina for five or more years prior to admission to practice in North Carolina is exempt from the PNA Program requirement and must notify the board of the exemption in the first annual report sent to the member pursuant to Rule .1522 of this subchapter.

(2) **Inactive Status.** A newly admitted member who is transferred to inactive status in the year of admission to the State Bar is exempt from the PNA Program requirement but, upon the entry of an order transferring the member back to active status, must complete the PNA Program in the year that the member is subject to the requirements set forth in paragraph (a) above unless the member qualifies for the exemption under paragraph (d)(1) of this rule.

(3) **Exemptions Under Rule .1517.** A newly admitted active member who qualifies for an exemption under Rule .1517 of this subchapter shall be exempt from the PNA Program requirement during the period of the Rule .1517 exemption. The member shall notify the board of the exemption in the first annual report sent to the member pursuant to Rule .1522 of this subchapter. The member must complete the PNA Program in the year the member no longer qualifies for the Rule .1517 exemption or the next calendar year unless the member qualifies for the exemption under paragraph (d)(1) of this rule.

(e) The board shall determine the process by which credit hours are allocated to lawyers' records to satisfy deficits. The allocation shall be applied uniformly to the records of all affected lawyers and may not be appealed by an affected lawyer.

**.1519 Accreditation Standards**

The bBoard shall approve continuing legal education programs that meet the following standards and provisions.

(a) They shall have significant intellectual or practical content and the primary objective shall be to increase the participant's professional

competence and proficiency as a lawyer.

(b) They shall constitute an organized program of learning dealing with matters directly related to the practice of law, professional responsibility, professionalism, or ethical obligations of lawyers.

(c) Participation in an online or on-demand program must be verified as provided in Rule .1520(d). ~~Credit may be given for continuing legal education programs where live instruction is used or mechanically or electronically recorded or reproduced material is used, including videotape, satellite transmitted, and online programs.~~

(d) Continuing legal education materials are to be prepared, and programs conducted, by an individual or group qualified by practical or academic experience. Credit shall not be given for any continuing legal education program taught or presented by a disbarred lawyer except a program on professional responsibility (including a program on the effects of substance abuse and chemical dependency, or debilitating mental conditions on a lawyer's professional responsibilities) and professional well-being and impairment programs taught by a disbarred lawyer whose disbarment date is at least five years (60 months) prior to the date of the program. The advertising for the program shall disclose the lawyer's disbarment.

(e) Live continuing legal education programs shall be conducted in a setting physically suitable to the educational nature of the program, and, when appropriate, equipped with suitable writing surfaces or sufficient space for taking notes.

(f) Thorough, high quality, and carefully prepared written materials should be distributed to all attendees at or before the time the program is presented, unless These may include written materials printed from a website or computer presentation. A written agenda or outline for a program satisfies this requirement when written materials are not suitable or readily available for a particular subject. The absence of written materials for distribution should, however, be the exception and not the rule.

(g) A sponsor of an approved program must timely remit fees as required in Rule .1606 and keep and maintain attendance records of each continuing legal education program sponsored by it, which shall be timely furnished to the bBoard in accordance with Rule .1520(g). ~~Participation in an online program must be verified as provided in Rule .1601(d).~~

(h) Except as provided in Rules .1523(d)

~~.1501 and .1602(h)~~ of this subchapter, in-house continuing legal education and self-study shall not be approved or accredited, ~~for the purpose of complying with Rule .1518 of this subchapter.~~

(i) Programs that cross academic lines, such as accounting-tax seminars, may be considered for approval by the bBoard. However, the bBoard must be satisfied that the content of the program would enhance legal skills or the ability to practice law.

**.1520 Requirements for Program Approval Registration of Sponsors and Program Approval**

(a) **Approval.** CLE programs may be approved upon the application of a sponsor or an active member on an individual program basis. An application for such CLE program approval shall meet the following requirements:

(1) The application shall be submitted in the manner directed by the Board.

(2) The application shall contain all information requested by the Board and include payment of any required application fees.

(3) The application shall be accompanied by a program outline or agenda that describes the content in detail, identifies the teachers, lists the time devoted to each topic, and shows each date and location at which the program will be offered.

(4) The application shall disclose the cost to attend the program, including any tiered costs.

(5) The application shall include a detailed calculation of the total CLE hours requested, including whether any hours satisfy one of the requirements listed in Rules .1518(b) and .1518(d) of this subchapter, and Rule 1.15-2(s)(3) of the Rules of Professional Conduct.

**(b) Program Application Deadlines and Fee Schedule.**

(1) **Program Application and Processing Fees.** Program applications submitted by sponsors shall comply with the deadlines and Fee Schedule set by the Board and approved by the Council, including any additional processing fees for late or expedited applications.

(2) **Free Programs.** Sponsors offering programs without charge to all attendees, including non-members of any membership organization, shall pay a reduced application fee.

(3) **Member Applications.** Members may submit a program application for a previ-

ously unapproved program after the program is completed, accompanied by a reduced application fee.

(4) On-Demand CLE Programs. Approved on-demand programs are valid for three years. After the initial three-year term, programs may be renewed annually in a manner approved by the Board that includes a certification that the program content continues to meet the accreditation standards in Rule .1519 and the payment of a program renewal fee.

(c) Program Quality and Materials. The application and materials provided shall reflect that the program to be offered meets the requirements of Rule .1519 of this subchapter. Sponsors and active members seeking credit for an approved program shall furnish, upon request of the Board, a copy of all materials presented and distributed at a CLE program. Any sponsor that expects to conduct a CLE program for which suitable materials will not be made available to all attendees may be required to show why materials are not suitable or readily available for such a program.

(d) Online and On-Demand CLE. The sponsor of an online or on-demand program must have a reliable method for recording and verifying attendance and reporting the number of credit hours earned by each participant.

(e) Notice of Application Decision. Sponsors shall not make any misrepresentations concerning the approval of a program for CLE credit by the Board. The Board will provide notice of its decision on CLE program approval requests pursuant to the schedule set by the Board and approved by the Council. A program will be deemed approved if the notice is not timely provided by the Board pursuant to the schedule. This automatic approval will not operate if the sponsor contributes to the delay by failing to provide the complete information requested by the Board or if the Board timely notifies the sponsor that the matter has been delayed.

(f) Denial of Applications. Failure to provide the information required in the program application will result in denial of the program application. Applicants denied approval of a program may request reconsideration of such a decision by submitting a letter of appeal to the Board within 15 days of receipt of the notice of denial. The decision by the Board on an appeal is final.

(g) Attendance Records. Sponsors shall timely furnish to the Board a list of the names of all North Carolina attendees together with

their North Carolina State Bar membership numbers in the manner and timeframe prescribed by the Board.

(h) Late Attendance Reporting. Absent good cause shown, a sponsor's failure to timely furnish attendance reports pursuant to this rule will result in (i) a late reporting fee in an amount set by the Board and approved by the Council, and (ii) the denial of that sponsor's subsequent program applications until the attendance is reported and the late fee is paid.

(a) Registration of Sponsors. An organization desiring to be designated as a registered sponsor of programs may apply to the board for registered sponsor status. The board shall register a sponsor if it is satisfied that the sponsor's programs have met the accreditation standards set forth in Rule .1519 of this subchapter and the application requirements set forth in Rule .1603 of this subchapter.

(1) Duration of Status. Registered sponsor status shall be granted for a period of five years. At the end of the five year period, the sponsor must apply to renew its registration pursuant to Rule .1603(b) of this subchapter.

(2) Accredited Sponsors. A sponsor that was previously designated by the board as an "accredited sponsor" shall, on the effective date of paragraph (a)(1) of this rule, be re-designated as a "registered sponsor." Each such registered sponsor shall subsequently be required to apply for renewal of registration according to a schedule to be adopted by the board. The schedule shall stagger the submission date for such applications over a three year period after the effective date of this paragraph (a)(2).

(b) Program Approval for Registered Sponsors.

(1) Once an organization is approved as a registered sponsor, the continuing legal education programs sponsored by that organization are presumptively approved for credit; however, application must still be made to the board for approval of each program. At least 50 days prior to the presentation of a program, a registered sponsor shall file an application, on a form prescribed by the board, notifying the board of the dates and locations of presentations of the program and the sponsor's calculation of the CLE credit hours for the program.

(2) The board shall evaluate a program presented by a registered sponsor and, upon a determination that the program does not

satisfy the requirements of Rule .1519, notify the registered sponsor that the program is not approved for credit. Such notice shall be sent by the board to the registered sponsor within 45 days after the receipt of the application. If notice is not sent to the registered sponsor within the 45-day period, the program shall be presumed to be approved. The registered sponsor may request reconsideration of an unfavorable accreditation decision by submitting a letter of appeal to the board within 15 days of receipt of the notice of disapproval. The decision by the board on an appeal is final.

(c) Sponsor Request for Program Approval.

(1) Any organization not designated as a registered sponsor that desires approval of a program shall apply to the board. Applicants denied approval of a program for failure to satisfy the accreditation standards in Rule .1519 of this subchapter may request reconsideration of such a decision by submitting a letter of appeal to the board within 15 days of receipt of the notice of disapproval. The decision by the board on an appeal is final.

(2) The board may at any time decline to accredit CLE programs offered by a sponsor that is not registered for a specified period of time, as determined by the board, for failure to comply with the requirements of Rule .1512, Rule .1519, and Section .1600 of this subchapter.

(d) Member Request for Program Approval. An active member desiring approval of a program that has not otherwise been approved shall apply to the board. Applicants denied approval of a program for failure to satisfy the accreditation standards in Rule .1519 of this subchapter may request reconsideration of such a decision by submitting a letter of appeal to the board within 15 days of the receipt of the notice of disapproval. The decision by the board on an appeal is final.

### .15213 Noncompliance

(a) Failure to Comply with Rules May Result in Suspension. A member who is required to file a report of CLE credits and does not do so or who fails to meet the minimum requirements of these rules, including the payment of duly assessed penalties and attendee fees, may be suspended from the practice of law in the state of North Carolina.

(b) Late Compliance. Any member who fails to complete his or her required hours by the end of the member's reporting period (i)

shall be assessed a late compliance fee in an amount set by the Board and approved by the Council, and (ii) shall complete any outstanding hours within 60 days following the end of the reporting period. Failure to comply will result in a suspension order pursuant to paragraph (c) below.

(bc) ~~Notice of Suspension Order for Failure to Comply.~~ 60 days following the end of the reporting period, ~~The board Council shall notify issue an order suspending any member who appears to have failed to meet the requirements of these rules, that the member will be suspended from the practice of law in this state, unless (i) the member shows good cause in writing why the suspension should not take effect; be made or (ii) the member shows in writing that he or she has complied with meets the requirements within the 30-day period after service of the notice order.~~ The order shall be entered and served as set forth in Rule .0903(d) of this subchapter. Additionally, the member shall be assessed a non-compliance fee as described in paragraph (d) below. Notice shall be served on the member by mailing a copy thereof by registered or certified mail or designated delivery service (such as Federal Express or UPS), return receipt requested, to the last known address of the member according to the records of the North Carolina State Bar or such later address as may be known to the person attempting service. Service of the notice may also be accomplished by (i) personal service by a State Bar investigator or by any person authorized by Rule 4 of the North Carolina Rules of Civil Procedure to serve process, or (ii) email sent to the email address of the member contained in the records of the North Carolina State Bar if the member sends an email from that same email address to the State Bar acknowledging such service.

(d) ~~Non-Compliance Fee.~~ A member to whom a suspension order is issued pursuant to paragraph (c) above shall be assessed a non-compliance fee in an amount set by the Board and approved by the Council; provided, however, upon a showing of good cause as determined by the Board as described in paragraph (g)(2) below, the fee may be waived. The non-compliance fee is in addition to the late compliance fee described in Paragraph (b) above.

(ee) ~~Effect of Non-compliance with Suspension Order. Entry of Order of Suspension Upon Failure to Respond to Notice to Show Cause.~~ If a member fails to

meet the requirements during the 30-day period after service of the suspension order under paragraph (c) above, the member shall be suspended from the practice of law subject to the obligations of a disbarred or suspended member to wind down the member's law practice as set forth in Rule .0128 of subchapter 1B, ~~written response attempting to show good cause is not postmarked or received by the board by the last day of the 30-day period after the member was served with the notice to show cause upon the recommendation of the board and the Administrative Committee, the council may enter an order suspending the member from the practice of law. The order shall be entered and served as set forth in Rule .0903(d) of this Subchapter.~~

(f) ~~Suspended members must petition for reinstatement to active status.~~

(dg) ~~Procedure Upon Submission of a Timely Response to a Notice to Show Cause Evidence of Good Cause.~~

(1) ~~Consideration by the Board.~~ If the member files a timely ~~written~~ response to the ~~notice, suspension order attempting to show good cause for why the suspension should not take effect, the suspension order shall be stayed and the bBoard shall consider the matter at its next regularly scheduled meeting, or may delegate consideration of the matter to a duly appointed committee of the board. If the matter is delegated to a committee of the board and the committee determines that good cause has not been shown, the member may file an appeal to the board. The appeal must be filed within 30 calendar days of the date of the letter notifying the member of the decision of the committee. The bBoard shall review all evidence presented by the member to determine whether good cause has been shown, or to determine whether the member has complied with the requirements of these rules within the 30-day period after service of the notice to show cause.~~

(2) ~~Recommendation of the Board.~~ The ~~bBoard~~ shall determine whether the member has shown good cause as to why the member should not be suspended. If the ~~bBoard~~ determines that good cause has not been shown, the member's suspension shall become effective 15 calendar days after the date of the letter notifying the member of the decision of the Board. The member may request a hear-

ing by the Administrative Committee within the 15-day period after the date of the Board's decision letter. The member's suspension shall be stayed upon a timely request for a hearing, ~~or that the member has not shown compliance with these rules within the 30-day period after service of the notice to show cause, then the board shall refer the matter to the Administrative Committee that the member be suspended.~~

(3) ~~Consideration by and Recommendation of Hearing Before the Administrative Committee.~~ The Administrative Committee shall consider the matter at its next regularly scheduled meeting. The burden of proof shall be upon the member to show cause by clear, cogent, and convincing evidence why the member should not be suspended from the practice of law for the ~~apparent~~ failure to comply with the rules governing the continuing legal education program. ~~Except as set forth above, the procedure for such hearing shall be as set forth in Rule .0903(d)(1) and (2) of this Subchapter.~~

(4) ~~Administrative Committee Decision.~~ If the Administrative Committee determines that the member has not met the burden of proof, the member's suspension shall become effective immediately. The decision of the Administrative Committee is final. ~~Order of Suspension.~~ Upon the recommendation of the Administrative Committee, the council may determine that the member has not complied with these rules and may enter an order suspending the member from the practice of law. The order shall be entered and served as set forth in Rule .0903(d)(3) of this Subchapter.

(e) ~~Late Compliance Fee.~~ Any member to whom a notice to show cause is issued pursuant to Paragraph (b) above shall pay a late compliance fee as set forth in Rule .1522(d) of this Subchapter; provided, however, upon a showing of good cause as determined by the board as described in Paragraph (d)(2) above, the fee may be waived.

#### .15242 Reinstatement

(a) ~~Reinstatement Within 30 Days of Service of Suspension Order~~

A member who is suspended for noncompliance with these rules governing the continuing legal education program may petition the ~~s~~Secretary of the State Bar for an order of



reinstatement of the member's license at any time up to during the 30-days wind-down period of the member's suspension, after the service of the suspension order upon the member. The Secretary shall enter an order reinstating the member to active status upon receipt of a timely written request and satisfactory showing by the member that the member (i) cured the continuing legal education deficiency for which the member was suspended, and (ii) paid the reinstatement fee as set forth in Paragraph (c) below. Such member shall not be required to file a formal reinstatement petition, or pay a \$250 reinstatement fee.

(b) Procedure for Reinstatement More than 30 Days After Service of the Order of Suspension.

Except as noted below, the procedure for reinstatement more than 30 days after service of the order of suspension shall be as set forth in Rule .0904(c) and (d) of this subchapter, and shall be administered by the Administrative Committee.

**(c) Reinstatement Petition**

At any time more than 30 days after service of an order of suspension on a member, a member who has been suspended for non-compliance with the rules governing the continuing legal education program may seek reinstatement by filing a reinstatement petition with the secretary. The secretary shall transmit a copy of the petition to each member of the board. The reinstatement petition shall contain the information and be in the form required by Rule .0904(e) of this subchapter. If not otherwise set forth in the petition, the member shall attach a statement to the petition in which the member shall state with particularity the accredited legal education programs that the member has attended and the number of credit hours obtained in order to cure any continuing legal education deficiency for which the member was suspended.

**(d) Reinstatement Fee.**

In lieu of the \$125.00 reinstatement fee required by Rule .0904(e)(4)(A), the petition Reinstatements pursuant to paragraphs (a) and (b) above shall be accompanied by a reinstatement fee payable to the Board, in the amount of \$250.00 set by the Board and approved by the Council.

(d) Reinstatement by Secretary of the State Bar. At any time during the 12-month period after the effective date of a suspension order, the Secretary of the State Bar may rein-

state a member who has petitioned for reinstatement upon finding that the suspended member has (i) cured the deficiency for which the member was suspended, and (ii) paid any outstanding fees. Reinstatement by the Secretary is discretionary. If the Secretary declines to reinstate the member, the member's petition shall be transmitted to the Board for review before consideration by the Administrative Committee.

(e) Determination of Board; Transmission to Administrative Committee.

Within 30 days of the filing of the petition for reinstatement with the secretary, the board shall determine whether the deficiency has been cured. If the petition is referred to the Board, the Board's written determination recommendation and the reinstatement petition shall be transmitted to the Secretary, within five days of the determination by the board. The Secretary shall transmit provide a copy of the petition and the Board's recommendation to each member of the Administrative Committee.

(f) Consideration by Administrative Committee.

The Administrative Committee shall consider the reinstatement petition and, together with the Board's determination, recommendation pursuant to the requirements of Rule .0902(c)-(f) of this subchapter.

(g) Hearing Upon Denial of Petition for Reinstatement.

The procedure for hearing upon the denial by the Administrative Committee of a petition for reinstatement shall be as provided in Section .1000 of this subchapter.

**.16021523 Course Content Requirements Credit for Non-Traditional Programs and Activities**

(a) Professional Responsibility Programs on Stress, Substance Abuse, Chemical Dependency, and Debilitating Mental Conditions. Accredited professional responsibility programs on stress, substance abuse, chemical dependency, and debilitating mental conditions shall concentrate on the relationship between stress, substance abuse, chemical dependency, debilitating mental conditions, and a lawyer's professional responsibilities. Such programs may also include (1) education on the prevention, detection, treatment and etiology of stress, substance abuse, chemical dependency, and debilitating mental conditions, and (2) information about assistance for chemically

dependent or mentally impaired lawyers available through lawyers' professional organizations. No more than three hours of continuing education credit will be granted to any one such program or segment of a program.

(b) Law School Courses. Courses offered by an ABA accredited law school with respect to which academic credit may be earned may be approved programs. Computation of CLE credit for such courses shall be as prescribed in Rule .1524-1605(a) of this subchapter. No more than 12 CLE hours in any year may be earned by such courses. No credit is available for law school courses attended prior to becoming an active member of the North Carolina State Bar.

(b) Service to the Profession Training. A program or segment of a program presented by a bar organization may be granted up to 3 hours of credit if the bar organization's program trains volunteer lawyers in service to the profession.

**(c) Teaching Law Courses.**

(1) Law School Courses. If a member is not a full-time teacher at a law school in North Carolina who is eligible for the exemption in Rule .1517(e) of this subchapter, the member may earn CLE credit for teaching a course or a class in a quarter or semester-long course at an ABA accredited law school.

(2) Graduate School Courses. A member may earn CLE credit by teaching a course on substantive law or a class on substantive law in a quarter or semester-long course at a graduate school of an accredited university.

(3) Courses at Paralegal Schools or Programs. A member may earn CLE credit by teaching a paralegal or substantive law course or a class in a quarter or semester-long course at an ABA approved paralegal school or program.

(4) Other Law Courses. The Board, in its discretion, may give CLE credit to a member for teaching law courses at other schools or programs.

(5) Credit Hours. Credit for teaching described in this paragraph may be earned without regard to whether the course is taught online or in a classroom. Credit will be calculated according to the following formula:

(A) Teaching a Course. 3.5 hours of CLE credit for every quarter hour of credit assigned to the course by the educational institution, or 5.0 hours of CLE

credit for every semester hour of credit assigned to the course by the educational institution. (For example: a 3-semester hour course will qualify for 15 hours of CLE credit.)

(B) Teaching a Class. 1.0 hour of CLE credit for every 50 – 60 minutes of teaching.

(c) Law Practice Management Programs

—A CLE accredited program on law practice management must satisfy the accreditation standards set forth in Rule .1519 of this subchapter with the primary objective of increasing the participant's professional competence and proficiency as a lawyer. The subject matter presented in an accredited program on law practice management shall bear a direct relationship to either substantive legal issues in managing a law practice or a lawyer's professional responsibilities, including avoidance of conflicts of interest, protecting confidential client information, supervising subordinate lawyers and nonlawyers, fee arrangements, managing a trust account, ethical legal advertising, and malpractice avoidance. The following are illustrative, non-exclusive examples of subject matter that may earn CLE credit: employment law relating to lawyers and law practice; business law relating to the formation and operation of a law firm; calendars, docketing and tickler systems; conflict screening and avoidance systems; law office disaster planning; handling of client files; communicating with clients; and trust accounting. If appropriate, a law practice management program may qualify for professional responsibility (ethics) CLE credit. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: marketing; networking/rainmaking; client cultivation; increasing productivity; developing a business plan; improving the profitability of a law practice; selling a law practice; and purchasing office equipment (including computer and accounting systems).

(d) Skills and Training Programs—A program that teaches a skill specific to the practice of law may be accredited for CLE if it satisfies the accreditation standards set forth in Rule .1519 of this subchapter with the primary objective of increasing the participant's professional competence and proficiency as a

lawyer. The following are illustrative, non-exclusive examples of subject matter that may earn CLE credit: legal writing; oral argument; courtroom presentation; and legal research. A program that provides general instruction in non-legal skills shall NOT be accredited. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: learning to use software for an application that is not specific to the practice of law (e.g., word processing); learning to use office equipment (except as permitted by paragraph (c) of this rule); public speaking; speed reading; efficiency training; personal money management or investing; career building; marketing; and general office management techniques.

(e) Technology Training Programs—A technology training program must have the primary objective of enhancing a lawyer's proficiency as a lawyer or improving law office management and must satisfy the requirements of paragraphs (c) and (d) of this rule as applicable. Such programs include, but are not limited to, education on the following: a) an IT tool, process, or methodology designed to perform tasks that are specific or uniquely suited to the practice of law; b) using a generic IT tool, process, or methodology to increase the efficiency of performing tasks necessary to the practice of law; c) the investigation, collection, and introduction of social media evidence; d) e-discovery; e) electronic filing of legal documents; f) digital forensics for legal investigation or litigation; g) practice management software; and h) a cybersecurity tool, process, or methodology specifically applied to the needs of the practice of law or law practice management. A program that provides general instruction on an IT tool, process, or methodology but does not include instruction on the practical application of the IT tool, process, or methodology to the practice of law shall not be accredited. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: generic education on how to use a tablet computer, laptop computer, or smart phone; training programs on Microsoft Office, Excel, Access, Word, Adobe, etc.; and instruction in the use of a particular desktop or mobile operating system. No credit will be given to a program that is sponsored by a manufacturer, distributor, broker, or merchandiser of an IT tool, process, or methodology unless the program is solely about using the IT tool, process, or methodology to perform tasks necessary or

uniquely suited to the practice of law and information about purchase arrangements is not included in the accredited segment of the program. A sponsor may not accept compensation from a manufacturer, distributor, broker, or merchandiser of an IT tool, process, or methodology in return for presenting a CLE program about the IT tool, process, or methodology.

(f) Activities That Shall Not Be Accredited—CLE credit will not be given for general and personal educational activities. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit:

- (1) courses within the normal college curriculum such as English, history, social studies, and psychology;
- (2) courses that deal with the individual lawyer's human development, such as stress reduction, quality of life, or substance abuse unless a course on substance abuse or mental health satisfies the requirements of Rule .1602(e);
- (3) courses designed primarily to sell services or products or to generate greater revenue, such as marketing or advertising (as distinguished from programs dealing with development of law office procedures and management designed to raise the level of service provided to clients);

(g) Service to the Profession Training—A program or segment of a program presented by a bar organization may be granted up to three hours of credit if the bar organization's program trains volunteer attorneys in service to the profession, and if such program or segment meets the requirements of Rule .1519(b) (g) and Rule .1601(b), (c), and (g) of this subchapter; if appropriate, up to three hours of professional responsibility credit may be granted for such program or program segment.

(h) In-House CLE and Self-Study. No approval will be provided for in-house CLE or self-study by attorneys lawyers, except, in the discretion of the Board, as follows:

- (1) programs exempted by the board under Rule .1501(e)(9) of this subchapter to be conducted by public or quasi-public organizations or associations for the education of their employees or members; and
- (2) programs to be concerned with areas of legal education not generally offered by sponsors of programs attended by lawyers engaged in the private practice of law; or

(23) live ethics programs on professional responsibility, professionalism, or professional negligence/malpractice presented by a person or organization that is not affiliated with the lawyers attending the program or their law firms and that has demonstrated qualification to present such programs through experience and knowledge.

(e) Bar Review/Refresher Course. Programs designed to review or refresh recent law school graduates or attorneys lawyers in preparation for any bar exam shall not be approved for CLE credit.

(f) CLE credit will not be given for (i) general and personal educational activities; (ii) courses designed primarily to sell services; or (iii) courses designed to generate greater revenue.

#### **.16051524 Computation of Credit**

(a) Computation Formula - Credit CLE and professional responsibility hours shall be computed by the following formula:

Sum of the total minutes of actual instruction / 60 = Total Hours

For example, actual instruction totaling 195 minutes would equal 3.25 hours toward CLE.

(b) Actual Instruction - Only actual education shall be included in computing the total hours of actual instruction. The following shall not be included:

- (1) introductory remarks;
- (2) breaks;
- (3) business meetings;
- (4) speeches in connection with banquets or other events which are primarily social in nature; and
- (5) unstructured question and answer sessions at a ratio in excess of 15 minutes per CLE hour, and programs less than 30 minutes in length provided, however, that the limitation on question and answer sessions shall not limit the length of time that may be devoted to participatory CLE.

(c) Computation of Teaching Credit - As a contribution to professionalism, credit may be earned for teaching in an approved continuing legal education program or a continuing paralegal education program held in North Carolina and approved pursuant to Section .0200 of Subchapter G of these rules. Programs accompanied by thorough, high quality, readable, and carefully prepared written materials will qualify for CLE credit on the basis of these rules at a ratio of three 3

hours of CLE credit for per each thirty 30 minutes of presentation. Repeat programs qualify for one-half of the credits available for the initial program. For example, an initial presentation of 45 minutes would qualify for 4.5 hours of credit.

#### **(d) Teaching Law Courses**

(1) Law School Courses. If a member is not a full-time teacher at a law school in North Carolina who is eligible for the exemption in Rule .1517(b) of this subchapter, the member may earn CLE credit for teaching a course or a class in a quarter or semester-long course at an ABA accredited law school. A member may also earn CLE credit by teaching a course or a class at a law school licensed by the Board of Governors of the University of North Carolina, provided the law school is actively seeking accreditation from the ABA. If ABA accreditation is not obtained by a law school so licensed within three years of the commencement of classes, CLE credit will no longer be granted for teaching courses at the school.

(2) Graduate School Courses. Effective January 1, 2012, a member may earn CLE credit by teaching a course on substantive law or a class on substantive law in a quarter or semester-long course at a graduate school of an accredited university.

(3) Courses at Paralegal Schools or Programs. Effective January 1, 2006, a member may earn CLE credit by teaching a paralegal or substantive law course or a class in a quarter or semester-long course at an ABA approved paralegal school or program.

(4) Credit Hours. Credit for teaching described in Rule .1605(d)(1) - (3) above may be earned without regard to whether the course is taught online or in a classroom. Credit will be calculated according to the following formula:

(A) Teaching a Course. 3.5 Hours of CLE credit for every quarter hour of credit assigned to the course by the educational institution, or 5.0 Hours of CLE credit for every semester hour of credit assigned to the course by the educational institution. (For example: a 3-semester hour course will qualify for 15 hours of CLE credit).

(B) Teaching a Class. 1.0 Hour of CLE credit for every 50 - 60 minutes of teaching.

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(5) Other Requirements. The member shall also complete the requirements set forth in Rule .1518(b) of this subchapter.

#### **.1525 Confidentiality Professionalism Requirement for New Members (PNA)**

(a) Content and Accreditation. The State Bar PNA program shall consist of 12 hours of training in subjects designated by the State Bar including, but not limited to, professional responsibility, professionalism, and law office management. The chairs of the Ethics and Grievance Committees, in consultation with the chief counsel to those committees, shall annually establish the content of the program and shall publish any changes to the required content on or before January 1 of each year. To be approved as a PNA program,

the program must satisfy the annual content requirements, and a sponsor must submit a detailed description of the program to the Board for approval. A sponsor may not advertise a PNA program until approved by the Board. PNA programs shall be specially designated by the Board and no program that is not so designated shall satisfy the PNA program requirement for new members.

(b) Timetable and Partial Credit. The PNA program shall be presented in two 6-hour blocks (with appropriate breaks) over two days. The 6-hour blocks do not have to be attended on consecutive days or taken from the same provider; however, no partial credit shall be awarded for attending less than an entire 6-hour block unless a special circumstances exemption is granted by the Board. The Board may approve an alternative timetable for a PNA program upon demonstration by the provider that the alternative timetable will provide an enhanced learning

experience or for other good cause; however, no partial credit shall be awarded for attending less than the entire 12-hour program unless a special circumstances exemption is granted by the Board.

(c) Online programs. The PNA program may be distributed over the internet by live streaming, but no part of the program may be taken on-demand unless specifically authorized by the Board.

(d) PNA Requirement. Except as provided in Rule .1517(1), each newly admitted active member of the North Carolina State Bar must complete the PNA program during the member's first reporting period. It is strongly recommended that newly admitted members complete the PNA program within their first year of admission.

#### .1526 Effective Date Procedures to Effectuate Rule Changes

(a) ~~The effective date of these Rules shall~~

~~be January 1, 1988.~~ Subject to approval by the Council, the Board may adopt administrative policies and procedures to effectuate the rule changes approved by the Supreme Court on [date], in order to:

(1) create staggered initial reporting periods;

(2) provide for a smooth transition into the new rules; and

(3) maintain historically consistent funding for the Chief Justice's Commission on Professionalism and the Equal Access to Justice Commission.

~~(b) Active members licensed prior to July 1 of any calendar year shall meet the continuing legal education requirements of these Rules for such year.~~

~~(c) Active members licensed after June 30 of any calendar year must meet the continuing legal education requirements of these Rules for the next calendar year. ■~~

## President's Message (cont.)

it was truly no worse than a cold. I credit my mild symptoms to the fact that I armed myself by getting vaccinated and receiving the booster. In my humble opinion (again, we can agree to disagree and still be friends), COVID is here to stay, and we will have to learn to live normally with this infection. I also believe that like the flu shot, those who have health concerns should consider getting the vaccine. But it is a personal decision as to how we prepare and live our lives, and we should make our personal decisions based on our knowledge of the infection, our personal beliefs, and our experiences.

I don't ever want to attend another virtual meeting! Because I have such a strong desire to attend gatherings large and small, indoors and outdoors, I will continue to stay vaccinated and get the booster when offered. I hope you will consider your choices as well and respect the decisions of others.

### Monumental Changes to CLE Rules

In this issue, you will find the publication of *proposed* changes to the rules governing continuing legal education for attorneys

licensed to practice law in North Carolina. I'm not, in this message, going to attempt to summarize the proposed amendments, but I would encourage you to review them and consider the summaries that Peter Bolac, assistant executive director of the State Bar, has prepared. That summary can be found on page 10 of this issue of the *Journal*, and I think that you will find many of the proposed changes to be beneficial whether you are an attorney or a provider of continuing legal education (i.e., NCBA, NCJA, NCADA, etc.). I hope that you will find the rule changes to be better for our profession, but there is always the possibility that the proposed changes need to be changed. Please consider giving us your constructive criticism and suggestions to improve these rules. While a lot of thought and reflection has gone into the proposed amendments, there may be room for improvement. The State Bar Council and the Board of Continuing Legal Education look forward to hearing your suggestions.

### Final Thoughts

It is indeed an honor to have the opportunity to serve with President-elect Marcia Armstrong, Vice-President Todd Brown,

Immediate Past-President Barbara Christy, State Bar councilors from the judicial districts, and Alice Mine and her staff at the North Carolina State Bar. The council has made a lot of progress in completing projects and initiatives that were being worked on when I became president in October. We have made progress with recommendations provided by the Diversity, Equity, and Inclusion Subcommittee and the recommendations that were adopted by the council are available in this issue (and on the website). In July we hope to have decisions with regards to the recommendations from the Subcommittee on Regulatory Change. Please stay informed about these and other projects and initiatives by reading the *Journal*, checking the State Bar website, and paying attention to information that is passed on to you through emails. We really are stronger when everyone participates and expresses their views. ■

*Darrin D. Jordan is a partner with the law firm of Whitley, Jordan, Inge & Rary, PA. He maintains a criminal practice in both state and federal court and is a board certified specialist in state criminal law. While he practices in his hometown of Salisbury, he lives in Kannapolis.*





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# Adjusting to a Hybrid Work Environment: Making Sense of the Messy Middle

BY LAURA MAHR

Welcome to the messy middle! We have collectively turned a corner in

the pandemic journey—no longer looking back and expecting to return to where we started, but not yet fully out the other side. For the foreseeable future, we will



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likely live with COVID-19 and its variants, taking precautions as we make work, life, and travel plans.

As we turned that corner, many law firms transitioned to a hybrid model, with some people working remotely and some at the office, or everyone working virtually at different points.

During the past two and a half years, we've learned that it IS possible to practice law and run law firms remotely. The *Thomson Reuters State of Legal Market Report* published in January of this year reports that

"The pandemic has conclusively demonstrated that remote working can be done successfully. In fact, disruptions resulting from work-at-home arrangements were less serious than most firms expected." In fact, "the pandemic has shown that remote working does not necessarily result in lower productivity...YTD productivity levels [January] through November 2021 were essentially the same as productivity levels

during the same period in 2019."<sup>1</sup>

The question we are living now is: "Just because it is possible, is it preferable?" A lawyer's favorite answer to most questions is apropos here: "It depends." It depends on who is being asked and what criteria is being used to determine the answer. According to the *Thomson Reuters Report*, the answer for the majority of lawyers is a resounding "yes." The report indicates that the desire for

hybrid work is steeply on the rise. “The number of lawyers who now want to work remotely at least one day a week has doubled from pre-pandemic levels and is now at about 86% of lawyers,” statistics from which the report then extrapolates, “Clearly, hybrid working arrangements are here to stay.”

For law firm leaders, the answer may be less clear. While many firms may prefer to return to in-office work, firm leaders are finding themselves facing a unique challenge: employees now know—and can’t unknow—the joys and successes of virtual work. Therefore, strict “work at the office because the firm says so” policies are now outmoded. Lawyers, business staff, and recruits are putting pressure on firms to create effective hybrid work models. Additionally, associates and business staff have heightened expectations that their preferences about virtual work be accounted for in decision making.

Lawyers and business staff have different priorities than they did pre-pandemic. At the top of the list is peoples’ desire to do meaningful work and have work-life balance in addition to getting paid well. “Young professionals are placing more explicit emphasis on work/life balance, mental well-being, leisure, and other activities outside work than was evident in previous generations.”<sup>2</sup> Living through the pandemic shifted many newer lawyers’ allegiance away from work and toward quality of life; associates are now more mobilized to look for more appealing work environments. “Emerging from the pandemic, the attitudes of associates toward life and work have clearly changed, and the loyalty of associates to their law firms has waned. About 27% of the 3,700 associates from 77 Am Law 200 firms surveyed by The American Lawyer for its 2021 Midlevel Associates Survey, said they would leave their current law firm for higher compensation. More importantly, 60% of respondents said they would consider leaving their firm for a better work-life balance.”<sup>3</sup>

Across the country, people in a number of fields are leaving their jobs in The Great Resignation. Between April and September 2021, more than 24 million American employees left their jobs, an all-time record, shown in the *Job Openings and Labor Turnover Survey* done by the US Bureau of Labor Statistics.<sup>4</sup> This trend is mirrored in the number of law firm associates resigning from their jobs. According to Leopard

Solutions, a legal market research company based in New York, “the average associate attrition rate in Am Law 100 firms was reported to be 16% before the pandemic.” That number jumped to 27% in 2021, “a staggering 61% increase.”<sup>5</sup>

Numerous associates have shared with me their reasons for resigning, including the unbearable stress of the billable hour coupled with the expectation that they must be available to work 24/7, leaving no time to enjoy life. These concerns are mimicked in the *Thomson Reuters Report*: “These reasons all boil down to the job itself, which junior corporate lawyers are increasingly finding to be unacceptably arduous and unrewarding. Some 20% of these lawyers are reporting extreme exhaustion, leading them to reassess their work-life balance.”

The combination of high attrition rates, challenges landing new recruits, and a push for remote work has many firm leaders confused and asking, “Why don’t people want to come to work anymore?!” For those struggling to comprehend current trends, a deeper understanding of the complex issues behind employee engagement and retention may illuminate the path forward. An informed and broadened perspective may allow leaders to navigate the messy middle by creating hybrid work policies that are both clear and mutually beneficial for leaders, employees, clients, and the firm’s bottom line.

### What’s Driving the Desire for Remote Work

As a resilience coach and well-being trainer and consultant for law offices across the country, I’ve listened to and learned from thousands of lawyers about the challenges and successes of practicing law during the pandemic. Through facilitating discussions on burnout prevention at for-profit and non-profit firms, two core values have emerged as antidotes to lawyer stress in challenging times: autonomy and flexibility. Simply put, people prefer to work when and how they want, and aspire to feel good when they’re working. Proponents of remote work appreciate the extra level of autonomy it gives them to stay in their at-home “flow” along with the flexibility of being able to work without having to “shift their state.”

By “shift their state,” I refer to the shift in the nervous system that occurs when we leave our homes and go out into the world. For some people, leaving their home and

going to the office causes their nervous system to move out of a calm, relaxed, “responsive” state to a “reactive” nervous system state—one of heightened vigilance that can feel either like anxiousness or like overwhelm coupled with the desire to withdraw, or both (for more information on nervous system states, see a column that appeared in the Fall 2020 edition of the *Journal* at [bit.ly/3uuPZAn](https://bit.ly/3uuPZAn)). For others, they experience the opposite—working at home creates a “reactive” nervous system state, filling them with anxiety and/or depression, and they feel more “responsive”—motivated, calm, and connected—working at the office.

Attorneys who find their nervous system maintains a more “responsive” state working remotely and is more “reactive” working at the office feel both happier and more productive working virtually. These attorneys share numerous reasons why they prefer remote work. For example, attorneys report:

- experiencing greater calm and less rumination when they have fewer COVID-19 issues to navigate, such as office COVID protocols and practices;
- working more effectively in the comfort of home, choosing where they work and who is nearby. Many people prefer to have control over lighting, sounds, scents, and food, for example. For some attorneys with disabilities, working from home where they have more control over their environment is less taxing than working at the office;
- appreciating the time saved working at home—they are able to use that time to exercise, recreate, and play with their kids and pets;
- enjoying the ability to work while on the move. They like having the flexibility of showing up “on camera” for meetings when traveling without having to explain where they are;
- having more energy at the end of the day after working remotely. This may be particularly true for attorneys who are introverts (and recharge their energy alone) versus extroverts (who recharge their energy around others), or for attorneys who are Highly Sensitive People;<sup>6</sup>
- finding it easier to go through mental health challenges outside of the office. Law is a profession that hasn’t traditionally made space for or normalized having mental health challenges, so most lawyers feel like they must hide their feelings and challenges at work. Many attorneys are going through



pandemic-exacerbated emotional ups and downs and mental health crises. It can feel overwhelming to hide and/or shift out of these emotional states in order to interact in-person with colleagues and clients;

- feeling more like themselves when they are at home. Attorneys from marginalized groups have expressed that they must “shift their state” when they go to the office because they need to hide or downplay differences such as their sexual orientation, culture, religion, ethnicity, and/or language in order to fit in. “Seeking to avoid stereotypes is hard work, and can deplete cognitive resources and hinder performance. Feigning commonality with coworkers also reduces authentic self-expression and contributes to burnout;”<sup>7</sup>

- going through personal transformations more comfortably in the privacy of their own homes than being observed in the workplace. This heightened desire for privacy may be relevant for attorneys going through any number of personal transformations including weight loss or gain, pregnancy, gender reassignment surgery or hormone replacement therapy;

- feeling relieved to not have face-to-face interactions with colleagues and clients with whom they have interpersonal conflict or around whom they feel uncomfortable. Working virtually surrounded by things that bring them comfort can help to more quickly dissipate interpersonal tension that may arise during the workday. This can serve to make a work environment that would otherwise be intolerable more manageable.

Additionally, in my conversations with firm leaders across the country, they share benefits from having a virtual workforce, such as:

- attracting and retaining a more diverse workforce;
- drawing from a broader pool of applicants;
- fostering greater connection via virtual video platforms for teams that work in different cities;
- getting to know colleagues in more personalized ways, such as through meeting colleagues’ pets, children, and significant others on camera; and
- increasing productivity.<sup>8</sup>

### **Benefits of Working In-Office and Challenges of the Virtual World**

Attorneys who experience a welcome

“shift in state” when working at the office share that they prefer it to remote work for a number of reasons, including:

- enjoying time with colleagues and feeling less isolated than working at home;
- maintaining clearer lines between work and home life and keeping work out of their home space;
- decreasing distractions—particularly if working at home with children—and having a designated place to focus on work;
- difficulty establishing a strong rapport with clients and colleagues on camera; and
- feeling more connected and having a more accurate perspective when seeing people in person.

Firm leaders express numerous challenges with remote work including:

- missed opportunities for in-person collaboration;
- challenges gauging the stress levels and mental health status of team members. Many lawyers find it hard to discuss well-being and find it even more challenging to address these issues remotely. It is generally easier and less confrontational to ask “how are you doing” in person, versus asking about mental health and offering resources on the phone or on a video call;
- difficulty engaging a remote workforce in social and team-building events;
- offering mentorship to attorneys who are struggling to meet expectations. It can be difficult to observe how they are operating and know how to help;
- coming up with new ways to address and mitigate digital exhaustion and isolation;
- providing the equipment necessary for virtual/hybrid work, including cybersecurity, privacy, and client confidentiality matters;
- navigating laws that regulate employees that live out of state, including payroll, unemployment, and other tax obligations;
- supervising associates conducting remote mediations, depositions, and hearings and staying attendant to potential liability issues; and
- creating clear and optimal policies regarding remote and hybrid work arrangements, especially as they shift with the COVID tides.

### **The Key Challenge in the Messy Middle**

Some people thrive working remotely while others languish. People have feelings, preferences, and sensitivities, and legitimate reasons for what they need and why they

need it. Firms that push their workforce to return to full time in-office work (or firms that continue to work remotely when their workforce prefers to work in-office) run the risk of creating counter-productive resentment. A resentful workforce may impact efficacy and collegiality as well as impair client relationships. Ultimately, lawyers and support staff may end up leaving a firm due to feeling disregarded, realizing that they have increased autonomy and flexibility elsewhere.

### **Greatest Potential Outcome of the Messy Middle**

Associates, do you know why you prefer to work remotely or in the office? Do you resonate with any of the examples given above? Have you talked to others about your preferences? What have you learned? Firm leaders, do you know why certain people at your firm prefer to work remotely and others prefer in-office work? Get curious! One idea is to survey your firm and ask:

- 1) Do you prefer to work remotely, in-office, or hybrid?
- 2) Why is this your preference?
- 3) How would remote or hybrid work best for you?
- 4) What would make coming to the office more appealing and comfortable for you?

Ask these questions in ways that allow anonymity so that employees feel free to share honestly (e.g., anonymous surveys, focus groups conducted by outside consultants, 1:1 interviews). Answers may illuminate places where a firm can make straightforward, logistical improvements that support easier shifts in nervous system states and create more fluid transitions between home and office. For example, you may be able to offer fairly simple modifications to an office, such as changing lighting or providing privacy blinds. Or, you may be able to improve the firm kitchen, ensuring there is a space for people to store and eat their own food. You may consider cultivating an office culture that encourages time for lunch and breaks, instead of working through lunch or eating at a desk.

Some answers to the above questions may indicate that firm policies, practices, and culture need to be addressed. For example, if you learn in your inquiry that some lawyers prefer to work remotely in an attempt to protect themselves from exclusionary behaviors,



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it will be beneficial to address diversity, equity, and inclusion (DEI) issues.

Firm leaders should spend time and resources to ask the above questions, listen with curiosity to the answers, and then organize and mobilize their firm toward positive cultural and policy-based changes. This inquiry process can catapult firms forward by making them more desirable places to work. Research is showing that “Not surprisingly, companies with a reputation for a healthy culture, including Southwest Airlines, Johnson & Johnson, Enterprise Rent-A-Car, and LinkedIn, experienced lower-than-average turnover during the first six months of the Great Resignation.”<sup>9</sup> Ignoring these questions may leave important issues unidentified, or identified too late (such as in exit interviews), which may then put a firm at risk for losing talent or appearing antiquated or out-of-touch. Ideally, firms would survey associates, business staff, and partners regularly about what works and what doesn’t work while soliciting ideas for how to best move forward.

## **Tools to Help Lawyers and Law Firms Tidy Up the Mess**

**Practice patience and offer options:**

Regardless of the position you hold at your firm and your preferences about where you work, recognize that everyone is going through challenges now. The best way to navigate difficulties is by working together, observing where team members function optimally, and playing to each person’s strengths. We all need time to recover from the losses of the past few years, and patience as we integrate the continued challenges of today’s world.

**Extend good will** to your work situation and consider options you’re willing to offer to find solutions. Decision makers: ask attorneys and business staff about what kind of schedule would be optimal for them. Employees: ask what options are available and offer other ideas, if appropriate. Having choices results in a greater sense of control and fosters personal agency, both of which increase productivity and motivation, and improve mental health.

**Accept, adjust, adapt, and appreciate:** Accepting differences in preferences doesn’t mean that you have to agree with or like opposing views. While our “lawyer brains” are accustomed to win-or-lose thinking, we are navigating complex times. Finding ways to work well together isn’t a win-or-lose

game. Successful policies will require compromise and flexibility. “If there is one lesson we’ve learned from the pandemic experience of the past two years, it is that law firm leaders must remain flexible in responding to rapidly changing events.”<sup>10</sup> Firm management and employees alike: when you notice someone being flexible about work hours and locations, let them know you recognize it and appreciate it. Write an email or say it aloud. A little appreciation can go a long way.

**Gather resources:** If you or your firm is having challenges or getting stuck navigating hybrid work transitions, seek additional resources. An outside expert or a team of experts can help lawyers and firms navigate toward solutions, most often with more efficiency and timeliness than when unassisted. Access consultants specializing in a broad scope of areas including DEI, well-being and mental health, IT, team communication and leadership development, conflict resolution, and interior decorating for office spaces. When vetting experts, make sure that they are focusing on solutions that foster inclusion, respect, honesty, collaboration, and regard.

**Prioritize mental health:** Along with

hybrid work environments, discussions about mental health and well-being should be here to stay. The pandemic revealed that many lawyers are struggling with mental health issues and may be trying to cope with these issues by using addictive substances.<sup>11</sup> While this was also the case pre-pandemic, the pandemic has clarified that firm-sponsored mental health and well-being training, along with 1:1 resilience coaching, is essential for both retention and recruitment of quality attorneys and leaders. To encourage participation in mental health programming and lessen the competing pressure for billing hours, firm leaders should consider counting participation in mental health programming toward billable hours. Addressing mental health issues, creating a healthy office culture, and implementing effective hybrid work models can support lawyers to work well and feel good.

**Trust your workforce** to work and do good work. “Any vestige of suspicion that people not present in the office can’t be hard at work must be erased. Employees and managers will have to learn how to build trust through meeting objectives, not the sight of someone sitting in front of a screen.”<sup>12</sup>

**Be clear and equitable:** Create and put into practice clear policies that extend the same expectations and benefits regarding promotions, assignments, workload, compensation, mentorship, social engagement opportunities, well-being benefits, decision-making power, and leadership opportunities to attorneys regardless of the work arrangement.

Additionally, define the parameters of communicating after normal business hours to alleviate the feeling that associates or business staff must be available 24/7.

**Communicate your “whys”:** Human brains make decisions based on meaning. If firms communicate the reasons behind their in-office/remote/hybrid policies, employees will be able to better understand and get on board. For example, if a firm requires in-office work (e.g., for meetings, client development events, firm retreats), explain why. Many associates express frustration at being asked to work in-office, then finding that the day’s meetings are being held virtually. Conversely, if you prefer to work remotely and your firm asks you to come to the office, explain your reasons for preferring to work virtually.

**Find new ways to connect:** It is easy for

lawyers to keep our heads down in our work and isolate from team members, especially if working virtually. Prolonged isolation is detrimental to both mental health and productivity. Likewise, finding new ways to connect teams for day-to-day business and social programming is key to healthy and effective teams. Depending on numerous factors, including personality, outside of work responsibilities, and nervous system wiring, different team members will have varying needs for connection. Teams should be surveyed to see how they prefer to interact in both day-to-day operations and team-building programming. Professional and social engagement will improve if people have a choice in programming. With that said, are you personally aware of what environments are best for you to function at your highest level? Are you an introvert or an extrovert? What are ideal ways to connect with your team members?

Numerous attorneys share that taking a break from alcohol-related events with clients and colleagues during the pandemic was relieving. Thus, there may now be space for new kinds of creative socializing ideas to emerge, such as outdoor events that allow for social distancing and fun. When planning social events, aim for high-caliber opportunities for connection where people feel safe, seen, and supported, not just “together.”

**Measure it:** While navigating change and trying new things, schedule time at regular intervals to check in and measure if the established policies, procedures, and practices are working. Times are changing rapidly, as are employees’ and clients’ needs. Individual attorneys: are you meeting your job expectations, finding your work meaningful, and taking time to care for yourself? Do people close to you express concern for your stress levels? Do they comment on how happy you are? Firm leaders: is the firm meeting its bottom line? Receiving positive client feedback? Attracting and retaining a diverse workforce? Implementing well-being programs that work? Are you finding your own work meaningful and finding time to care for yourself?

### Moving Out of the Messy Middle

As we emerge from the pandemic and create new work environments, we are likely to make mistakes along the way. Just as we muddled through working at home at the

outset of the pandemic, so can we learn by trial and error now. We are currently navigating yet another transition, and transitions are naturally messy in the middle. What is the best way to work? It depends. Asking ourselves and our teams questions about what is preferred and why it is preferable will help us move forward and may help us clear up messes that have long needed attention along the way. Ideally, through the process of listening with curiosity and responding with sincerity about what best supports “responsive” nervous system states, what we learn in the process of creating hybrid work models will help us thrive as lawyers and law firms. What would it be like if we could take the best of both worlds—remote and in-office work—and create a hybrid world that is even better, together? ■

*Laura Mahr is a North Carolina and Oregon lawyer and the founder of Conscious Legal Minds LLC, providing well-being consulting, training, and resilience coaching for attorneys and law offices nationwide. Through the lens of neurobiology, Laura helps build strong leaders, happy lawyers, and effective teams. Her work is informed by 13 years of practice as a civil sexual assault attorney, 25 years as a teacher and student of mindfulness and yoga, and five years studying neurobiology and neuropsychology with clinical pioneers. She authors the Pathways to Well-Being column in the NC State Bar Journal and the Mindful Moment column in the NC Lawyer Assistance Program’s Sidebar publication, and is a frequent contributor to other legal publications and podcasts. She can be reached through [consciouslegalminds.com](http://consciouslegalminds.com).*

### Endnotes

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11. [bit.ly/3MdIWIR](https://bit.ly/3MdIWIR).
12. Robert Sher, *Lessons from One Law Firm’s Pre-Pandemic Shift to Hybrid Work*, *Harvard Business Review* (online ed.), June 23, 2021.

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# Investing in our Future Leaders—30 Years and Beyond

BY REBECCA J. BRITTON

**A**s we celebrate 30 years of High School Mock Trial in North Carolina

this year, I cannot help but remember the first team I coached at Westover High School in Fayetteville. It was 1995. My kids had worked

hard to prepare their case for the regional competition. When we arrived at the Cumberland County courthouse that morning, I knew they were ready. They were excited sitting in the large courtroom for the welcome ceremony before we were sent to our respective courtrooms to start the first round of trials.

It all appeared to come crashing down, however, when my team walked into their courtroom and realized they were matched against a local private school in the first competition round. They looked crushed as they quietly said to me, “Mrs. B, we are going to get humiliated. Those kids are really smart.” I

promised them they were ready and they would not be humiliated. I asked them to trust me. I sat back behind the bar in the courtroom and watched them. They were scared. What really bothered me the most about their fear was they didn’t think they should be there—they did not think they were smart enough.

But that very quickly changed. As the opposing team’s attorney began to give their opening statement, reading from notes, one of our team attorneys turned around and looked at me with her eyebrows raised. I smiled and gave her a reassuring nod. When she stood to give her opening, without notes, and walked over





to the jury box, each word she spoke cultivated confidence and she delivered a fantastic opening statement. During her four-minute opening, I could actually see the entire team transform from self-doubt and fear to a belief in themselves and what they were really capable of doing that day. Late in the afternoon there were tears when they did not make the final round, but there was also a determination that next year they would win regionals...and they did. The year after, they won state finals and traveled to Albuquerque, New Mexico, to compete at nationals, taking fifth in the nation—the highest placement at nationals for a North Carolina state champion at the time.

This transformation for high school students is the “secret sauce” of mock trial. I could easily fill hundreds of pages with stories of students over these 30 years who found their voices, their confidence, their ability to think on their feet, and their leadership skills through their participation in this program. I could do the same of students whose successes in their chosen career path and beyond were substantially built upon foundational bricks of mock trial. Anyone who has coached a team, whether an educator or attorney, can do the same. High School Mock Trial, you see, is not about making lawyers, it is about making leaders. It takes the students who participate in it and creates citizens who have a better understanding of the importance of trial by jury; the judicial system; and the judges, attorneys, and legal professionals that are part of it.

In a nutshell, this is how high school mock trial works: A new case is prepared each year for the season which begins with a case release in early September as schools across North Carolina begin registering their teams to compete. Cases are written for balance, with good and bad facts for each side, and alternate between civil and criminal from year to year. Case materials include witness statements, exhibits, pretrial rulings, stipulations, some statutes and case law, and limited jury instructions. Rules of evidence and rules of competition are also included, and students are limited strictly to the materials provided. Student teams, with the help of teacher advisors and volunteer attorney coaches, prepare to try both sides of the case at competition. The teams consist of six to nine students each and are comprised of three student attorneys and three student witnesses for each side of the case, a bailiff, and a time keeper. Currently the North Carolina Advocates for

Justice (NCAJ) High School Mock Trial Competition holds ten regional competitions around the state, all on the same day—on a Saturday usually in early February. Each regional competition site has anywhere from eight to 12 teams competing. The winner of each regional is invited to state finals, typically held in early to mid-March. At state finals, a state champion is determined and that state champion earns the right to compete at the National High School Mock Trial Championship (NHSMTTC), which is hosted by a different state each year typically during the first or second weekend in May. A new case written by the host state is released for nationals by April 1 for the participating state champions to similarly prepare.

The High School Mock Trial Program began in North Carolina 30 years ago with a Wake Forest University initiative called Creative Research Activities Development and Enrichment (CRADLE), which had an office at the Wake Forest School of Law. One of CRADLE's projects was to educate students about the Constitution of the United States, including the role of trial by jury, so they began conducting mock trials for high school students<sup>1</sup> and they enlisted the help of Wake Forest law students<sup>2</sup> as coaches. With their limited staff and support, however, CRADLE very quickly faced an inability to continue the program they started. Fortunately, Erin Reynolds, who was part of the North Carolina Academy of Trial Lawyers (NCATL) staff at that time, learned about the program and convinced NCATL's Public Education Committee to take a look at it. Gordon Widenhouse of Rudolph Widenhouse & Fialko, who was then VP of public education for NCATL, along with Rich Manger of the Manger Law Firm in High Point, and others who served on the Public Education Committee, volunteered to judge the student trials. They were so impressed with what they saw, they went back to NCATL and encouraged the association to take on the program because it was a perfect fit for NCATL's public education mission. Leadership at NCATL agreed, and staff and volunteers came together to make the program happen. NCATL ran with the program, multiplying its size and reach from year to year. High School Mock Trial became NCATL's flagship public education program because it truly transformed the lives of students who participated in it, while educating the public about trial by jury and about lawyers and judges and what they do. NCATL recog-

nized that the program not only educated its participants, it also educated parents, family members, and educators who were awed by its impact and realized a very different picture of the legal profession than the stereotypes they had often come to expect.

In 2002, as NCATL continued to grow the program, Burton Craige of Patterson Harkavy was serving as president of NCATL and took the association's commitment to mock trial a step further. Burton wanted North Carolina to host the National High School Mock Trial Championship. As public education vice-president at that time, I, along with NCATL CEO Dick Taylor, flew to St. Paul, Minnesota, for the national competition and meeting of the NHSMTTC Board, where we pitched our bid to host the 2005 nationals. We had some strong competition from other states, but won the bid to host in 2005 in Charlotte. At that point the planning and fundraising began.

The National High School Mock Trial Championship is truly a massive event and has a life-long impact on the students who are fortunate enough to participate as state champions. Typically, around 44 to 48 state championship teams come from their respective states around the country to compete, as well as teams from Guam, the Commonwealth of Northern Marianas Islands, and South Korea. The students have about four to five weeks from case release to prepare for nationals. Students arrive to social events and scrimmages on Thursday, two rounds of trials on Friday with a social event to blow off steam on Friday evening, and two rounds of trials on Saturday before the final two teams are announced for the national championship round late Saturday afternoon. After the championship round, an awards gala is held and there is typically a dance afterward. This is really just the 10,000-foot view, however. The in-the-trenches details of planning, funding, and pulling off this massive event for over 450 participants and their coaches and family members (1,000+ people) as well as the logistics of over 200-300 attorneys and judges volunteering for trial rounds and another 100+ site volunteers to make it happen is mind boggling.

All of NCATL's planning for the 2005 nationals went very well and relatively smoothly, until one huge issue arose about four weeks before the event when an accommodation request came from the New Jersey state championship team. The Torah

Academy was an Orthodox Jewish high school and its students could not compete from sunset Friday through darkness Saturday due to their religious observances. They had earned the right to compete, but the established nationals schedule prohibited their meaningful participation. While it was impossible to change dates so close to the event, NCATL started looking for ways to accommodate. As host director, I began getting emails and calls from all over the country and the globe as we attempted to work through this issue with the NHSMTC Board. Stories about this team and their plight were making national and international news. Ultimately, in spite of significant opposition by the NHSMTC Board at the time, NCATL came up with and implemented a reasonable accommodation that would allow the Torah Academy to fully compete. It was honestly a great moment in the history of the mock trial program. We knew we had done the right thing. We saw it in the faces of the Torah Academy team and their families, and we saw it in the faces of the rest of the students who learned the importance of making this kind of accommodation. Teams from around the country volunteered to participate in the accommodation in order to help make it happen.

To its credit and to the credit of its amazing staff, NCATL pulled off a wonderful nationals in 2005, despite our big bump in the road leading up to the event. In the process we also fostered partnerships and financial support from multiple organizations and associations around the state. Our case committee wrote a fantastic fictional case centered around a race car crash at the Lowe's Motor Speedway. The speedway even hosted the Friday night social event on site, and students and their families had free pace car rides. It was tremendously rewarding to see all of the hard work our volunteers and the NCATL staff put into that event turn out so well. I fondly recall Allen Bailey, one of NCATL's founding members, coming to the competition to watch some of the trials. Allen was in failing health at the time and was unable to judge a round, but he was determined to be there and to at least go into a few courtrooms to see some of the action unfolding. He was proud of the work his NCATL family had done and proud of what the mock trial program had accomplished in North Carolina.<sup>3</sup>

When the dust settled from the national event in 2005, the NHSMTC Board, at its

fall meeting, resolved and voted that the accommodation made by North Carolina for the Torah Academy team would never be made again. It was at this point that both North Carolina members of the NHSMTC Board, myself and Andy McVey with Murchison, Taylor & Gibson in Wilmington, resigned from the board. Both North Carolina and New Jersey withdrew from the NHSMTC, and NCATL and the New Jersey Bar Foundation worked together to offer our own "national" competition called the "American Mock Trial Invitational," which successfully allowed North Carolina and New Jersey to continue to compete at a higher level after our state finals competition. In fact, several states and South Korea also sent teams to compete at the AMTI. NCATL and the New Jersey Bar Foundation alternated hosting the event, and it worked out really well.

Our North Carolina program experienced more growth after hosting nationals, and by 2009 we had expanded the program to ten regional competitions and around 95 teams competing annually. The growth of the mock trial program, however, and other factors in the challenging economic environment of the time, required a move away from having the North Carolina Advocates for Justice (previously NCATL) and its staff manage the program in-house. It was then that past-presidents and NCAJ board members, at the initiation and urging of past-president Janet Ward Black of Ward Black Law of Greensboro, personally contributed funds to continue the program, and the decision was made to utilize a nonprofit that would take over the responsibility of operating the program. That is where the Carolina Center for Civic Education, now called the North Carolina Mock Trial Program, came in. Once again, Gordon Widenhouse and Rich Manger stepped up to lead with Gordon serving as president and Rich as secretary of the CCCCE, and I served as vice-president and treasurer. Together, we, along with our board and a lot of dedicated volunteer attorneys, paralegals, and legal staff around the state, managed to keep the program afloat for the 2009/2010 season. We were able, with the donations from past-presidents and board members of NCAJ, and sponsorships of our regional competitions by firms across the state, to get a foothold to reshape, improve, and grow the program going forward.

As fate would have it, just as we were beginning to worry about our arrangement with

New Jersey and how we would possibly be able to pull off another joint AMTI competition with our slim budget, something happened at the NHSMTC. Georgia was hosting in 2009 and the Maimonides School in Brookline, Massachusetts, won their state championship. They, like the Torah Academy, were an Orthodox Jewish school and, like the Torah Academy, would need accommodation to compete at nationals. The NHSMTC Board, citing its 2005 decision, was recalcitrant not to make any accommodation. In the end, however, the Justice Department as well as the Georgia State Bar and Fulton County's Superior Court Chief Judge Doris Downs disagreed with the board's position and advised the NHSMTC Board if it wished to use courthouse facilities for their national competition that year, it needed to make an accommodation. All entities cited the fact that a reasonable accommodation could obviously be made because North Carolina had done it in 2005.<sup>4</sup> Clearer heads then prevailed and the NHSMTC Board vacated its earlier decision, accommodated the Maimonides School just as we had the Torah Academy, and began writing an official accommodation policy going forward.

I received an email from Jeffrey Kosowski, a parent of one of the Maimonides School team members, in the midst of their challenge for accommodation:

Perhaps surprisingly, the initial reaction of many of the Maimonides School parents and students was a mix of disappointment and resigned understanding that perhaps nothing could be done to allow our students to participate while observing the Jewish Sabbath without seriously disrupting the entire tournament schedule. The students were still excited about winning the Massachusetts state championship. Believing that there was no alternative, the team accepted the fact that at the 2009 Atlanta championship they would be forced to forfeit the Saturday rounds and give up on any chance of winning or even placing in the top half. Such is the price that sometimes must be paid for remaining faithful to one's beliefs and traditions. However, our reaction changed from acceptance to dogged activism as we learned about the noble behavior of the North Carolina Trial Lawyers Association in the face of an intransigent NHSMTC Board when a similar situation occurred in 2005, the year that North Carolina hosted the championship.

Yes, North Carolina and New Jersey rejoined the NHSMTTC in the fall of 2009 after it was clear the accommodation issue was resolved going forward, and both states returned to the national competition in May 2010 in Philadelphia, Pennsylvania...the city of brotherly love.

After surviving our first year, our little non-profit hired our first contract employee in late 2010, which greatly increased our ability to administer the program effectively. Ultimately, we hired a full-time program coordinator, Sue Johnson, in 2012. Sue had worked part-time in health care and had been homeschooling four children when she first reached out to me in 2009 about getting her son involved in the mock trial program. We helped her get a homeschool team started and Sue coached her son's mock trial team to Nationals in Phoenix, Arizona in 2011. When her son graduated, she went ahead and completed a paralegal studies program. As she and I talked, it became clear that she had a lot of energy for the mock trial program and would be a good fit. Sue happily took on the administrative side of operating the program and helped us reach several milestones. With the donated help of a freelance web developer, Justin Scheef, Sue not only got the program website up and running that we had all been talking about for quite a while, she also organized the first Mock Trial Summer Camp Program in North Carolina in 2013, which we have since held annually, offering education and training to students who have beginner and advanced interest in honing their mock trial skills. We developed the camp because so many students in North Carolina were looking at summer mock trial camp options out-of-state that were prohibitively expensive. Our goal was to offer basically the same camp experience right here at home at a very reasonable cost.

In 2013, our board recognized the NHSMTTC Board was facing some significant challenges which we felt potentially jeopardized the future of the national competition program. Where previously states were competing to host the national championship, the board was seeking out states to host and not readily coming up with volunteers. With our ties returned to the NHSMTTC, we felt some obligation to step up and support the NHSMTTC. With trepidation and Sue Johnson's unending optimism and encouragement, our little nonprofit offered to again host nationals, this time in Raleigh. The NHSMTTC Board readily

accepted our bid. Of course, this time around we did not have the luxury of dedicated NCAJ staff to put nationals together, so we formed a Nationals Steering Committee of amazingly dedicated volunteers,<sup>5</sup> as well as a Nationals Advisory Committee of leaders in the legal community who we knew and relied on as stalwart supporters of the program.<sup>6</sup> Both Gordon Widenhouse and I took seats on the NHSMTTC Board, Gordon as host director for North Carolina and myself as a regularly elected board member. I particularly appreciated returning to the NHSMTTC Board and resuming old friendships and making new friendships with like-minded folks who are deeply dedicated to the mission of high school mock trial and the impact it has on the students who participate in it. On the NHSMTTC Board the focus is and always will be on what is "best for the kids."

In hosting nationals in 2015, we renewed partnerships and support from many organizations and groups who had been there for us in 2005. One of our big questions as we planned the event was "how do we top Lowe's Motor Speedway and pace car rides?" Well, Gordon Widenhouse had the answer to that question. He suggested we invite Supreme Court Justice Antonin Scalia to speak at the awards gala following the championship round. We all thought this was a great idea, but really did not think it would happen and continued to explore other ideas and options. Meanwhile, Gordon sent Justice Scalia a letter along with a copy of a drawing of Gordon and Justice Scalia both wielding lightsabers (a gift to Gordon from friend and past-president of NCAJ, David Teddy of Teddy Meekins & Talbert in Shelby). Justice Scalia obviously appreciated the lightsabers and agreed to come. At that point the entire committee felt the weight and pressure of the event clearly reaching a new level.

With the combined financial support of NCAJ, the North Carolina Bar Association Foundation, Lawyers Mutual, the ABOTA Foundation, FindLaw, and many law firm and individual contributors<sup>7</sup> and with the work of so many dedicated volunteers (including NCAJ staff who voluntarily pitched in to help), nationals in Raleigh was a huge success. The competition case was loosely based upon the recovery of North Carolina's original copy of the Bill of Rights through an FBI "sting" operation in 2003, which now Chief Justice Paul Newby was involved with when he worked as an assistant US attorney. Competition trials

(93 of them total) were held at the Wake County courthouse, Wake Justice Center, Campbell Law School, and the State Bar building. Then Chief Justice Martin graciously attended and spoke at a reception for all judges and jurors hosted at the State Bar building during the event. Justice Antonin Scalia not only eloquently spoke to and with our students at the awards gala, but he also participated in a ticketed fundraising dinner beforehand. He was very gracious.

After hosting nationals in 2015, the mock trial program continued to thrive and grow with our annual NCAJ High School Mock Trial Competition and our summer camp program. In the summer of 2018, however, change was once again in the air for the mock trial program. Sue Johnson was offered a most deserved position at Patrick Henry College in Virginia as their forensics program director, and Gordon Widenhouse, long time president of CCCE, determined it was time for him to step back from leadership. With these two very significant changes to the mock trial program, we worked once again to pivot and maintain. We were very lucky to find Liz Jones, a former NCAJ staffer whose responsibilities in years past had been the oversight of the mock trial program for NCAJ. We hired Liz as our new program administrator and restructured our leadership as I stepped in as president, Rich Manger as vice-president, Adrienne Blocker of DeMayo Law Offices in Charlotte as secretary, and Andy McVey as treasurer. The board also evaluated and decided the name "Carolina Center for Civic Education" really did not convey what we did as an organization, and voted to change the name to the "North Carolina Mock Trial Program."

Liz Jones had big shoes to fill as program administrator, but as we expected she would, Liz hit the ground running. Her special way of handling circumstances and situations with the kindest tone and highest level of professionalism was inspiring. Liz ran our existing programs like a champ, and was the right person to have at the right time. She exemplified such wonderful leadership that the NCMTTP Board made her executive director of the NCMTTP by fall 2019. Under Liz's excellent leadership and support, we had maintained and were well on our way with a successful season, having completed our regional competitions in February 2020 and were gearing up for state finals, which were to be hosted at Campbell Law School in Raleigh



in March 2020. Then the COVID pandemic hit. In the two weeks leading up to state finals, we went from thinking we could pull off state finals to thinking we could do it with some adjustments and precautions, to having to make the difficult decision to cancel altogether as information, increases in risks, and closures exponentially changed from day to day. Nationals was also cancelled. There were so many unknowns at that time, and the uncertainty of what lay ahead was daunting.

The NCMTB Board<sup>8</sup> met by Zoom in the aftermath of the cancellations. We were determined, with what we knew our students were going through, to put on our summer camp as well as the NCAJ High School Mock Trial Competition in the coming season. Students had lost so much and we did not want them to lose the opportunity and challenge of mock trial. We formed a committee and Liz Jones dug in and began putting together a way to do summer camp and, ultimately, our regional and state finals competition in 2020/2021 online. The NHSMTC Board was also working to make the national competition remote for 2021 and were generous in sharing their work as well. Our summer camp was our “test case” for the online format, and I was both surprised and pleased at how well it came together with Liz running Zoom conferences, interactive training sessions with volunteer instructors, and mock trials at the close of camp. Liz created a “play book” and educated and trained us all on how to pull off a remote competition, and in February 2021 we had our first successful online NCAJ High School Mock Trial regional competition with ten regions competing on the same day in five different massive Zoom calls that contained two competition sites each. Pre-pandemic I was a person who was unfamiliar with and resistant to Zoom, but Liz educated me and she educated our other “Zoom managers” to run their events. We also “zoomed” for state finals in 2021. We had a wonderful response from lawyers and judges around the state for both the regional and state finals competitions, which went amazingly smooth under the circumstances. Chief Justice Paul Newby was very kind to preside over the state finals championship round for 2021, and our students were thrilled to still be able to compete.

The NCMTB Board had hoped to go back to a live competition for this 2021/22 season, although we were prepared to pivot if we had to. Unfortunately, by December

2021, with the Omicron variant surging numbers again, and surveying our teachers and coaches, it became clear to us that we had to go remote for regionals once again. After nationals opted to go remote for 2022 and numbers were still peaking here in North Carolina, our board also had to opt for a remote state finals for 2022.

As I write this article, the NCMTB is gearing up for our remote state finals on March 18 and 19. We have, again, had a wonderful response from our judge and attorney volunteers, and Chief Justice Paul Newby has again graciously agreed to preside over our championship round and to speak at a reception we will hold during the two-day online competition. At least for now it appears that we can go back to a live competition next season. I know all of our regional coordinators<sup>9</sup> and site coordinators around the state will be happy to return to the regular format, and, especially, our students and their coaches. While Zoom is better than not having the competition at all, the live format brings so much more to the experience. Our regional and state finals sponsors, I am sure, will also be happy to see us back “live.”<sup>10</sup> We will see what the 2022/23 season holds, but meanwhile we need to step back and look at where we have been and where we go from here.

As we celebrate 30 years of high school mock trial, I think about 30 years of judges and attorneys stepping up to preside and score trials, 30 years of attorneys and teachers who have dedicated themselves to coaching students for this program, 30 years of lawyers and paralegals and legal assistants stepping up to serve as regional and site coordinators to make our competitions happen. And then I remember my kids from Westover High School in 1995 fearing they were not smart enough, overcoming their fear, and succeeding beyond their imaginations, and I multiply that, in some form, by thousands of other high school students here in North Carolina over these 30 years. Such a legacy of learning, and it is exciting to think about the years to come!

For our 30th anniversary celebration we have created a t-shirt that has all of our mock trial “slogans” on it, which we started using each year at state finals beginning in 2009. The t-shirts can be purchased online<sup>11</sup> and part of the proceeds will go to the NCMTB. I mention this because in thinking about our 30-year history, my favorite slogan, for so many reasons, is the one we are using this year: “KEEP CALM AND MOCK ON.”

Thank you to everyone reading this article who has participated in and supported the North Carolina Mock Trial Program and the NCAJ High School Mock Trial Competition. We could not do it without you! For any of you who have not joined us before, I hope to see you next season. If you would like to know more about our program and how support it, please visit our website at [ncmocktrial.org](http://ncmocktrial.org). ■

*Rebecca Britton is a certified superior court mediator, having litigated plaintiff personal injury and wrongful death claims since 1992. She is the president of the North Carolina Mock Trial Program and an adjunct professor of advanced trial advocacy at Campbell University School of Law. She is also a former president of the North Carolina Advocates for Justice and a recipient of the North Carolina State Bar John B. McMillan Distinguished Service Award.*

## Endnotes

1. One of the high school participants at that time was Brooke Schmidly, who currently practices in Asheboro and is a Certified Family Financial Mediator, former district court judge, and a member of the NCMTB Board.
2. One of those Wake Forest law student coaches was a 2L named Chris Nichols, who currently practices in Raleigh, is a past-president of NCAJ, a past board member of NCMTB, and is, once again, coaching a team.
3. It is fitting and appreciated that the Allen A. Bailey Endowment, among the important educational opportunities it supports from year to year, includes support of the North Carolina Mock Trial Program.
4. [bit.ly/3MsL8pt](http://bit.ly/3MsL8pt).
5. Nationals 2015 Steering Committee members: Adrienne Blocker, Rebecca Britton, Lindsey Granados, Frankford Johnson, Susan Johnson, Carlos Mahoney, Richard Manger, Beth Nichols, Chris Nichols, Katy Parker, Christine Scheef, Amy Smith, Mark Sumwalt and M. Gordon Widenhouse Jr.
6. Nationals 2015 Advisory Committee members: Janet Ward Black, Rebecca Britton, Hampton Dellinger, Justice Robert H. Edmunds Jr., Hon. N. Lorin Freeman, Rep. Richard B. Glazier, Dean J. Rich Leonard, Justice Paul M. Newby, Judge Mary Ann Tally, Richard M. Taylor Jr., Justice Patricia Timmons-Goodson, M. Gordon Widenhouse Jr., Melvin F. Wright Jr.
7. Nationals 2015 sponsors and supporters: Carolina Center for Civic Education, North Carolina Advocates for Justice, North Carolina Bar Association Foundation, Lawyers Mutual Insurance of North Carolina, ABOTA Foundation, NCBA Litigation Section, FindLaw, Wisconsin State Bar, Britton Law, PA, Murchison, Taylor & Gibson, PLLC, The Sumwalt Law Firm, Rudolph Widenhouse and Fialko, Ward Black Law, Chief Justice's Commission on Professionalism, J. David Stradley, Janet Ward Black, Adrienne Blocker, A Better Image Printing, Hon. Mary Ann Tally. In kind supporters: Creative Visions (Awards Gala), Campbell Law School (facility), North Carolina State Bar (Judge's Reception), Marco Promotional Products (gifts and

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# Personal Jurisdiction

BY R. DANIEL GIBSON

Whether it's calling your ex in North Carolina or buying an SUV in Montana, personal jurisdiction has been a hot topic lately. Assuming you remember what you learned in law school, personal jurisdiction may have changed since then. The oldest case this article discusses is six years old. Most are less than two years old.

Even if you don't enjoy personal jurisdiction, understanding these issues will help your clients. Just last month, Lawyers Mutual reported a \$1.75 million wrongful death settlement.<sup>1</sup> Although they didn't say it drove the settlement, the plaintiffs' lawyer recognized the defendants raised a "formidable" personal jurisdiction defense. Personal jurisdiction can push a case to a better forum or a favorable settlement.

At root, personal jurisdiction is about fairness. Did the defendant do enough to expect that North Carolina could bring them into court? But that simple question belies a complex reality.

You probably remember that there are two types of personal jurisdiction: general and specific. When you live in North Carolina, that's general personal jurisdiction. For a corporation,<sup>2</sup> that generally means it must be incorporated in North Carolina or headquartered in North Carolina. When you reach out to North Carolina and get sued over what you reached out for, that's specific personal jurisdiction.

## At Home: General Personal Jurisdiction

General personal jurisdiction isn't as simple as it first seems. If the beneficiaries of a trust live in North Carolina, does North Carolina have personal jurisdiction over the trust? The United States Supreme Court recently said "no."<sup>3</sup> The trust itself is the legal person. So the trust has to live in or reach out

to North Carolina. North Carolina residents who benefit from the trust without controlling it aren't enough.

General and specific personal jurisdiction can also blend together. If Ford isn't incorporated in Montana or headquartered in Montana, Montana probably doesn't have general personal jurisdiction. But it also advertises in Montana, services cars in Montana, and runs dealerships in Montana. If my client buys a Ford in Montana because of Ford's Montana business, does Montana have personal jurisdiction? What if my client doesn't buy it from a Ford dealership? According to the United States Supreme Court,<sup>4</sup> Montana has personal jurisdiction. That decision seems to blend general and specific personal jurisdiction. Typically, "continuous and systematic contacts" are a hallmark of general personal jurisdiction. But the court held that Montana had *specific* personal jurisdiction because it "systematically served" Montana's market. That service connected "the defendant, the forum, and the litigation," giving Montana specific personal jurisdiction.

## Reaching Out: Specific Personal Jurisdiction

The connection between the defendant and the forum is the key to specific personal jurisdiction. That's how *Ford* is still a specific personal jurisdiction case. And it's how our state Supreme Court just decided phone calls to your ex aren't enough to give North Carolina personal jurisdiction. In *Mucha*, the plaintiff lived in South Carolina and dated Wagoner who lived in Connecticut. They broke up. Mucha told Wagoner never to speak to her again. Wagoner didn't give up though. He called her 28 times in one day. She answered and told him to stop. Wagoner kept calling. She had a panic attack listening to a voicemail. That same day, Mucha moved

to North Carolina. She sued for a domestic violence protective order in North Carolina. Our Supreme Court said North Carolina had no personal jurisdiction over Wagoner.<sup>5</sup> Wagoner did call a North Carolina resident, but he had no way of knowing or anticipating that Mucha was in North Carolina. Even if he suspected she moved, nothing suggested which state she moved to.

Even some phone calls to a North Carolinian with a North Carolina number may not be enough. Calling your North Carolina lover a few times for less than a minute does not mean he or she can sue you in North Carolina for alienation of affection.<sup>6</sup> Remember, a defendant has to reach out to North Carolina enough to expect being brought into court in North Carolina. That turns on each case's facts. The plaintiff has to show the quality and quantity of contacts are enough. (Do note this case is on appeal to the North Carolina Supreme Court).<sup>7</sup>

For the same reason, representing a North Carolina client may not give North Carolina personal jurisdiction (later affirmed by the NC Supreme Court).<sup>8</sup> Just putting a choice of law or venue provision in a contract isn't enough either.<sup>9</sup> Several facts are determinative. If the representation actually relates to North Carolina, that makes jurisdiction more likely. For example, if you traveled to North Carolina as part of the representation, North Carolina probably would have personal jurisdiction. That's true even if you traveled as an officer of your firm or business. If the representation relates to the lawsuit, that also makes personal jurisdiction more likely. The most important fact may be whether the plaintiff or defendant initiates the contact.

The importance of who initiates the contact helps explain what could otherwise look like hair splitting. Representing a North Carolina client may not create personal jurisdiction. But calling up a North Carolina busi-

ness to sell them parts does create personal jurisdiction.<sup>10</sup> There are two distinctions. First, the defendant initiated the contacts. Second, the defendant provided goods to a North Carolina business. That was enough to tie the contract to North Carolina and put the defendant on notice it was dealing with a North Carolinian.

There's another wrinkle in specific personal jurisdiction. The defendant's contacts don't always have to relate *directly* to the plaintiff's claims. Suppose a foreign defendant is dealing directly with a North Carolina plaintiff. The defendant calls and emails, travels to North Carolina, and has North Carolina contracts. Then the defendant breaches the contract. The defendant calls up its lawyer. The lawyer has read this article, so she says, "Cut your ties and North Carolina might not have personal jurisdiction." The lawsuit isn't about the contract's performance. It's about the breach. The North Carolina Business Court agreed, but the North Carolina Supreme Court reversed.<sup>11</sup> Performance relates to breach. Just looking at a defendant's post-breach contacts is "missing the forest for the trees."

### Personal Jurisdiction Exceptions

Personal jurisdiction often requires a defendant to be at home in North Carolina or reach out to North Carolina. But not always. Rare "status exception" cases give personal jurisdiction even without minimum contacts. You can sue for divorce even when your spouse is not in North Carolina. Because terminating parental rights focuses on the child, not the parent, the North Carolina Supreme Court recently recognized the status exception applies here, too.<sup>12</sup>

Suppose a plaintiff is suing to decide who owns property in North Carolina. This is called a *quasi in rem* case. If the property is in North Carolina, North Carolina has personal jurisdiction<sup>13</sup> even if the defendant didn't reach out to North Carolina and is not at home in North Carolina.

### Practice Pointers

What do trial lawyers need to remember about personal jurisdiction? First, a bit of self-service. Appeals lawyers like the law. We can give you the law. Consulting a "law lawyer" can help you win, set you up to win on appeal, or get a favorable settlement.

If you represent a plaintiff when a defendant challenges personal jurisdiction, remember the burden is on you to show North Carolina has jurisdiction over the defendant. Even if the defendant contests jurisdiction, you can still engage in discovery or take depositions. Don't agree to a hearing on a motion to dismiss for lack of personal jurisdiction until you've done discovery—including looking for digital evidence. And on behalf of appellate attorneys everywhere, please make sure you preserve your objections to personal jurisdiction and any questionable evidence showing personal jurisdiction.

If you represent the defendant, get evidence that proves your client didn't reach out to North Carolina. Get your clients' documents, including any digital communications and phone logs. Figure out who started the conversation. If it wasn't your client, that's a good place to start. Look for any clues your client might have had that the plaintiff was in North Carolina. Try to explain how those clues didn't give your client notice he was

interacting with North Carolina.

Remember, personal jurisdiction is waivable. Move to dismiss for lack of personal jurisdiction before you answer or make a general appearance. Don't wait to say you object to personal jurisdiction—that can be a waiver, too. And don't ask the court for anything—even a continuance or extension of time—until you have put your objection to jurisdiction on the record. Our courts have held that asking for a continuance, stipulating to an extension of time, appearing in court for your client, or moving to disqualify counsel are general appearances. And a general appearance waives personal jurisdiction objections. If you must file an answer, put the motion to dismiss for lack of personal jurisdiction in your answer. ■

*Dan Gibson is an attorney practicing with Stam Law Firm, PLLC, in Apex. His practice focuses on appeals and civil litigation. He has been recognized by Thomson Reuter's SuperLawyers Rising Stars and Business North Carolina's Legal Elite for Appellate Practice.*

### Endnotes

1. [bit.ly/3xtsdnt](http://bit.ly/3xtsdnt).
2. [bit.ly/37olP94](http://bit.ly/37olP94).
3. [bit.ly/3vhguZe](http://bit.ly/3vhguZe).
4. [bit.ly/3M5gYbL](http://bit.ly/3M5gYbL).
5. [bit.ly/3M8wEL9](http://bit.ly/3M8wEL9).
6. [bit.ly/3rnEw3t](http://bit.ly/3rnEw3t).
7. [bit.ly/3xxjmnw](http://bit.ly/3xxjmnw).
8. [bit.ly/3rrV9Lr](http://bit.ly/3rrV9Lr).
9. [bit.ly/3EcUfaS](http://bit.ly/3EcUfaS).
10. [bit.ly/3KK5zxp](http://bit.ly/3KK5zxp).
11. [bit.ly/3OafZc1](http://bit.ly/3OafZc1).
12. [bit.ly/36eG2h7](http://bit.ly/36eG2h7).
13. [bit.ly/3JPsnKY](http://bit.ly/3JPsnKY).

## Mock Trials (cont.)

awards), Mark Valentine, The Visual Advantage (signage) Justin Scheef (web design), Joe Stanley (photography), Jason's Deli (judge meals).

8. NCMTF current Board of Directors: Rebecca J. Britton, president, Richard A. Manger, vice-president, Andy McVey, treasurer, Adrienne Blocker, secretary, Helen Baddour of Johnson Groninger, PLLC, Brad Bannon of Patterson Harkavy, LLP, Drew Haywood of The Law Office of Drew Haywood, Christine Scheef, assistant litigation counsel with the North Carolina School Boards Association, Brooke Schmidly, Mark Sumwalt of Sumwalt Anderson in Charlotte, and ex officio member John McCabe, of McCabe Law Offices.

9. Regional coordinators and site coordinators: Fayetteville:

Rebecca Britton and Tanja Shurling, both with Britton Law. Gastonia: Holden Clark and Ivana Hughes with Hometown Counsel; Jacqueline Thurman with Ken Harris & Associates, PA. Greenville: Meredith Hinton with the Ricci Law Firm; Sandra Strickland with East Carolina University; Caitlin Tatum with DysartWillis. Hickory: Blia Vang and Bianca Lopez with BV Law Firm, PLLC; Rich Manger and Grace Lay with Cordell Cordell. Hillsborough: Drew Haywood with Law Office of Drew Haywood, Rebecca Ugolick with Howard, Stallings, From, Atkins, Angell & Davis, PA, and Patti Clapper with Poyner Spruill, LLP. Raleigh: Christine Scheef with the North Carolina School Boards Association, Lindsey Granados with the Law Offices of Wiley Nickel, PLLC, Michelle Keely with the NC Dept. of Justice, and Amanda Miller with Weatherspoon & Voltz, LLP. Salisbury: John Basinger of Basinger Law Offices and Alicia Coggins. Wilmington: John H.

Anderson Jr., with McGuire Woods, Rachel Royal with Royal Touch Legal Solutions, and Catherine Holland with Horton & Mendez.

10. Current regional and state finals sponsors: Fayetteville: Britton Law. Gastonia: Gaston County Bar Association and Hometown Counsel Attorneys at Law PLLC. Greenville: Hardee, Massey, Blodgett, LLP. Hendersonville: The Van Winkle Law Firm and Melrose Law. Hickory: The Law Offices of Jason E. Taylor and Orndoff Law Firm. High Point: High Point Bar Association. Hillsborough: Patterson Harkavy LLP and the District Bar of the 18th Judicial District of North Carolina. Raleigh: Maginnis Howard and Settlement Planning Services, LLC. Salisbury: The 19C (Rowan) Judicial Bar. Wilmington: Shipman & Wright, LLP. State finals championship: Sumwalt Anderson Law Firm.
11. 30th Anniversary t-shirts: [bit.ly/3KlcsQ2](http://bit.ly/3KlcsQ2).

# Grievance Committee and DHC Actions

NOTE: More than 30,500 people are licensed to practice law in North Carolina. Some share the same or similar names. All discipline reports may be checked on the State Bar's website at [ncbar.gov/dhcorders](http://ncbar.gov/dhcorders).

## Disbarments

**H. Trade Elkins** of Hendersonville pled guilty in the US District Court for the Western District of North Carolina to one felony count of wire fraud in violation of 18 U.S.C. § 1343. He was sentenced to 24 months in prison followed by supervised release and was ordered to pay restitution of \$545,738.90. Elkins tendered an affidavit of surrender of his law license and was disbarred by the Disciplinary Hearing Commission.

**Brian Love** of Durham submitted an affidavit of surrender of his law license. Love used the personal information of victims to falsely register online accounts in their names, impersonated victims in sexually explicit communications with others, obtained and transmitted sexually explicit images of victims to others without their consent, and used fraudulent online accounts to repeatedly text victims, with the intent to harass them and cause them substantial emotional distress. Love pled guilty to the federal felony offenses of Aggravated Identity Theft and Stalking. He was disbarred by the Wake County Superior Court.

**Nikita V. Mackey** of Charlotte collected legal fees and engaged in the unauthorized practice of law while his law license was administratively suspended, neglected and did not communicate with two clients, did not refund unearned fees, made a false representation in his petition for reinstatement, did not participate in good faith in the mandatory fee dispute resolution process, and did not respond to the Grievance Committee. In a separate case, Mackey neglected and did not communicate with a client, vandalized cars owned by his former spouse and her father by discharging a firearm into them, negotiated a check upon

## Wire Fraud - Heightened Discipline

Six years ago, in 2015, the State Bar began receiving reports of criminals hacking into the email accounts of lawyers, their clients, real estate brokers, and others, altering wiring instructions, and diverting loan payoffs and other disbursements from real estate and other transactions. Since 2015 the State Bar has written and spoken extensively about this danger in the *Journal*, on social media accounts, and in continuing legal education programs. The State Bar has also issued Formal Ethics Opinions (2015 FEO 6 and 2020 FEO 5) about this topic. Lawyers Mutual Insurance Company and title insurance companies have also continued to broadcast warnings and educational information about these scams. To date, the State Bar's Grievance Committee has opened 65 grievance files when lawyers failed to take adequate precautions to protect entrusted funds from these wire fraud scams. Initially, the Grievance Committee issued dismissals accompanied by letters of warning, advising respondent lawyers of their professional obligation to protect entrusted funds. After nearly three years of extensive education on this topic, the Grievance

Committee concluded that lawyers should be fully aware of the danger posed by these email scams. At its July 2019 meeting, the Grievance Committee began issuing permanent discipline—one reprimand and two admonitions—in wire fraud cases. Since then, the Grievance Committee has referred two lawyers to the Disciplinary Hearing Commission and has issued four reprimands, 12 admonitions, three dismissals with letters of warning, and three dismissals with letters of caution. Special alerts were also published in The Disciplinary Department section of the State Bar *Journal's* Fall 2019 and Winter 2019 issues. Unfortunately, although North Carolina lawyers have now received two additional years of notice and education on this issue, the State Bar continues to receive reports of lawyers who failed to take adequate precautions to prevent wire fraud scams. **ACCORDINGLY, THE GRIEVANCE COMMITTEE IS PROVIDING NOTICE THAT LAWYERS WHO FAIL TO TAKE ADEQUATE PRECAUTIONS TO PROTECT AGAINST WIRE FRAUD SCAMS CAN EXPECT IMPOSITION OF MORE SERIOUS PROFESSIONAL DISCIPLINE.**

which he forged his former spouse's endorsement, and slept during a substantial portion of a client's federal criminal trial. Mackey did not appear at the hearing and was disbarred by the DHC.

## Suspensions & Stayed Suspensions

After participating in the Trust Account Compliance Program, **Victoria Block** of New Bern did not properly reconcile her trust account. She did not file a responsive pleading and default was entered. The DHC suspended her for two years. The suspension is stayed upon Block's compliance with enu-

merated conditions.

**Thomas O. Harper III** of Atlanta did not file federal income tax returns from 2013 to 2017. He was suspended by the DHC for two years. The suspension is stayed for two years upon Harper's compliance with enumerated conditions.

**James Landivar** of Charlotte assisted out-of-state entities in the unauthorized practice of law, shared fees with nonlawyers, made false or misleading statements about his services, engaged in conduct involving dishonesty or misrepresentation, neglected and did not communicate with clients, and did

not properly supervise nonlawyer assistants. Landivar was suspended by the DHC for two years. The suspension was stayed upon his compliance with enumerated conditions.

**Meg Sohmer Wood** of Charlotte assisted out-of-state entities in the unauthorized practice of law, shared fees with nonlawyers, made false or misleading statements about her services, engaged in conduct involving dishonesty or misrepresentation, neglected and did not communicate with clients, and did not properly supervise nonlawyer assistants. The DHC suspended her for three years. The suspension is stayed upon Wood's compliance with enumerated conditions.

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### Interim Suspensions

The chair of the DHC entered an order suspending the law license of **Brian R. Harwell** of Mooresville on an interim basis pending conclusion of disciplinary charges. Harwell pled guilty in Iredell County Superior Court to felony possession of methamphetamine, misdemeanor harboring a fugitive, and misdemeanor resisting a public officer. Harwell made one or more false statements to police officers regarding a client's whereabouts when the officers arrived at Harwell's home seeking to serve a warrant for the client's arrest.

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### Censures

**Justice H. Campbell** of Charlotte was censured by the Grievance Committee. He did not make reasonable efforts to ensure his associate conformed to the Rules of Professional Conduct and did not take reasonable remedial action to avoid the consequences of his associate's failure to communicate with a client, denying the client the opportunity to make informed decisions about his case. He demonstrated a lack of legal knowledge to competently represent the client and a lack of diligence in pursuing the client's case. He made false statements to his client and to the Grievance Committee.

**Ralph DiLeone** of Raleigh was censured by the Grievance Committee. DiLeone hired Journey, a North Carolina resident who was licensed in California but not in North Carolina, to work as an attorney at his law firm. He permitted Journey to provide legal services to North Carolina residents in North Carolina legal matters and charged and collected fees from them for Journey's work. He sponsored Journey for *pro hac vice* admission to North Carolina

courts despite the fact that she was ineligible for such admission as a North Carolina resident. The motions for *pro hac vice* admission contained false statements about Journey's eligibility for *pro hac vice* admission. DiLeone reported that he relied upon Journey to ascertain the legal requirements for *pro hac vice* admission and did not familiarize himself with applicable law. He reported to the State Bar that he therefore did not realize that the motions contained false statements. When he learned that the statements were false he did not promptly correct them and did not notify the court of Journey's ineligibility for *pro hac vice* admission. The court discovered these facts independently and revoked the *pro hac vice* admissions with Journey's consent. In issuing a censure, the Grievance Committee considered DiLeone's refusal to acknowledge the wrongful nature of his conduct, lack of remorse, lack of efforts to rectify the consequences of the misconduct, and lack of prior discipline.

**John Snyder** of Matthews was censured by the Grievance Committee. Snyder represented the defendant in a civil lawsuit. After the plaintiff filed a voluntary dismissal with prejudice, Snyder filed an answer and motion for summary judgment, which had no basis in law or fact, and billed his client for doing so. Snyder did not communicate adequately with his client and did not respond to the district bar Grievance Committee. Although the misconduct specific to this client occurred before the DHC suspended him in 19DHC13, Snyder did not respond to the district bar Grievance Committee after his license was suspended for misconduct that included failing to respond to the State Bar Grievance Committee.

**Ryan A. Spencer** of Raleigh diverted a fee received from a client to himself, rather than to his law firm employer, which was entitled to the fee. Spencer was censured by the DHC.

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### Reprimands

**Michele English** of Chapel Hill was reprimanded by the Grievance Committee. English undertook to sponsor an Ohio lawyer, Banks, for *pro hac vice* admission in multiple cases in two tribunals. English did not attend all hearings as she was required to do, did not properly register the *pro hac vice* admissions with the State Bar, and did not

pay the required registration fees. When she was notified by the State Bar twice of the deficiencies and of what she must do to cure them, English forwarded the information to Banks and asked her to cure the deficiencies but took no action herself to cure the deficiencies.

**David W. Hands** of Charlotte was reprimanded by the Grievance Committee. He did not adequately supervise his paralegal, who wired a payoff pursuant to changed wire instructions without verifying the wire instructions beforehand. As a result, the payoff proceeds were wired to a fraudster's account, and Hands incurred claims against his insurers, a lawsuit from his client, and loss of a significant portion of the payoff proceeds.

**William Shilling** of Murphy was reprimanded by the Grievance Committee. He solicited foster parents, through their attorney, to "tell the district attorney that they will not allow the child to testify" in exchange for his client, who was charged with criminal offenses regarding the child, agreeing not to oppose guardianship and agreeing to sign a relinquishment of her parental rights.

**Charles Kunz** of Durham was reprimanded by the Grievance Committee. Kunz filed incomplete immigration paperwork for a client and did not attach any of the necessary documentation. In a separate representation, Kunz made arrangements for the opposing party to travel to North Carolina to receive personal property without disclosing that he did not intend to deliver all of the personal property to the opposing party. After the opposing party made a fruitless trip to North Carolina, Kunz promised to mail the property to him but did not do so.

**Kayce C. Staehle** of Denver was reprimanded by the Grievance Committee. She made duplicate disbursements from her trust account in a real estate transaction because she did not maintain accurate client ledgers and did not properly reconcile her trust accounts. She also did not show substantive improvement in her trust account management after participation in the State Bar's Trust Account Compliance program.

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### Completed Petitions for Reinstatement/Stay - Contested

**Kenneth Irek** of North Hills, California, was disbarred by the DHC in 1993 for misappropriating entrusted funds. The DHC



denied Irek's 2022 Rule 60 motion seeking to vacate the disbarment order on grounds that the State Bar allegedly did not exercise due diligence before serving him by publication and allegedly did not maintain complete records of the proceeding.

**Ertle K. Chavis** of Lumberton was disbarred in 2015 for misappropriating entrusted funds. The DHC granted the State Bar's motion to dismiss his petition for reinstatement.

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### Transfers to Disability Inactive Status

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**Patricia W. Harvey** of Asheville was transferred to disability inactive status by the DHC.

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### Notice of Intent to Seek Reinstatement

#### In the Matter of Harry L. Southerland

Notice is hereby given that Harry L. Southerland of Raeford intends to file a peti-

tion for reinstatement before the Disciplinary Hearing Commission. Southerland was disbarred effective August 9, 2004, by The North Carolina State Bar for misappropriating client funds for his own use.

Individuals who wish to note their concurrence with or opposition to this petition should file written notice with the secretary of the State Bar, PO Box 25908, Raleigh, NC 27611-5908, before August 1, 2022. ■

## Upcoming Appointments to Commissions and Boards

Anyone interested in being appointed to serve on any of the State Bar's boards, commissions, or committees should email [lheidbrink@ncbar.gov](mailto:lheidbrink@ncbar.gov) to express that interest (being sure to attach a current resume), by July 8, 2022. The council will make the following appointments at its meeting in July:

**Board of Legal Specialization (three-year terms)**—There are three appointments to be made. Everett Vic Knight (public member) and Kimberly Coward (lawyer member) are not eligible for reappointment. Matthew J. Ladenheim (lawyer member) is eligible for reappointment.

The Board of Legal Specialization is a nine-member board comprised of six lawyers (at least one of whom cannot be a board certified specialist) and three public members. The board establishes policy related to the execution of the specialization program's mission and is responsible for oversight of the operation of the program subject to the statutes governing the practice of law, the authority of the council, and the rules of the board. The specialization board meets four times a year.

The specialization program assists in the delivery of legal services to the public by identifying to the public those lawyers who have demonstrated special knowledge, skill, and proficiency in a specific field, and seeks to improve the competency of members of the bar by establishing an additional incentive for lawyers to partici-

pate in continuing legal education and to meet the other requirements of specialization.

**IOLTA Board of Trustees (three-year terms)**—There are three appointments to be made. Shelby D. Benton and Heather W. Culp are both eligible for reappointment. Maria Missé is not eligible for reappointment.

The IOLTA Board of Trustees is a nine-member board comprised of at least six North Carolina lawyers. The board establishes policy related to the execution of IOLTA's mission and is responsible for oversight of the operation of the program subject to the statutes governing the practice of law, the authority of the council, and the rules of the board. The IOLTA Board usually meets three times per year—April, September, and December—with periodic meetings scheduled in between as needed. NC IOLTA is a non-profit program created by the NC State Bar that works with lawyers and banks across the state to collect net interest income generated from lawyers' general, pooled trust accounts for the purpose of funding grants to providers of civil legal services for the indigent and programs that further the administration of justice.

**General Statutes Commission**—There is one appointment to be made by the State Bar President. Starkey Sharp is eligible for reappointment. There are no terms limits for members of the commission.

The commission consists of 13 members appointed by various persons and entities. See N.C. Gen. Stat. 164-13. One appointment is made by the president of the State Bar.

The duties of the commission are set forth in N.C. Gen. Stat. 164-13 and include advising and cooperating with the Legislative Services Office in the work of continuous statute research and correction for which the Legislative Services Office is made responsible by G.S. 120-36.21(2).

**North Carolina Disputes Resolution Commission (three-year terms)**—There is one appointment to be made. Barbara Morgenstern is eligible for reappointment.

Pursuant to N.C. Gen. Stat. § 7A-38.2, the Dispute Resolution Commission is charged with certifying and regulating private mediators who serve the courts of this state. The commission also recommends policy, rules, and rule revisions relating to dispute resolution in North Carolina's courts; provides support to court-based mediation programs; certifies mediation training programs; serves as a clearinghouse for information about court-based mediation programs; and assists other state agencies interested in or providing dispute resolution services to their constituencies.

The commission is an 18-member body. Appointments to the commission are made by all branches of government. The president of the North Carolina State Bar makes two appointments.

# New Specialty in Child Welfare Law Launched

BY DENISE MULLEN, MANAGING DIRECTOR FOR THE BOARD OF LEGAL SPECIALIZATION

The Board of Legal Specialization launched a new specialty in child welfare law late last year. The child welfare law specialty is an important addition to the program and a way in which the State Bar can recognize lawyers who devote their careers to helping children in difficult or harmful circumstances. The initial group of board certified specialists included the specialty committee members, who wrote and graded the first exam, and a group of seasoned practitioners who agreed to complete the BETA exam process and provide feedback for improvement. The following are some of their thoughts on how this certification will impact the practice of child welfare law.

**Q: How will having a child welfare law specialty in NC will benefit the public?**

Sara DePasquale: Child welfare proceedings, which are abuse, neglect, dependency, and termination of parental rights actions, are unique legal actions. They involve the government's intervention with a family. North Carolina's child welfare laws are designed to provide a balance between the government's interests of protecting children and the constitutional rights of parents and children with a recognition that family autonomy and preservation are stated values and objectives. The cases are complex and involve multiple hearings, multiple parties, different procedures, different evidentiary standards, and numerous state and federal laws. The laws in this field are constantly changing. It is crucial that the legal professionals involved in these cases have a true understanding and knowledge of these laws to ensure that not only are the families involved in the child welfare system protected, but that the justice system fulfills the purpose of North Carolina's Juvenile Code as it applies to these families. Ultimately, that benefits the citizens of North Carolina.

Deana Fleming: Attorneys working in this area of law are serving the public in one capacity or another. The State Bar recognizing

child welfare law as a specialty shows the public the importance of families and children within the legal system.

Matt McKay: At any given time over the last few years, North Carolina has had about 15,000 children in foster care, and each one is a juvenile court case. As an attorney for these children, I consider the predicament of each of these kids to be, at some level, a daily-recurring tragedy. Our juvenile court system is tasked with trying to rebuild for these children a life that they deserve but do not have. Creation of the child welfare law specialty certification advances our juvenile court system by acknowledging and cultivating a level of proficiency in a field that literally takes care of our state's most vulnerable, disaffected, and powerless citizens. These children deserve a system populated by lawyers as experienced and talented as lawyers in any other practice area of law. The new State Bar certification sets a beacon for the practitioners in this field.

**Q: How will your certification in child welfare law benefit your clients?**

Mona Leopold: Creation of this new certification will assist in providing ongoing legislative attention and support. Hopefully, this attention will result in funding to gain and maintain adequate staff, court time, and development of programs to provide sufficient and timely access to necessary public services for families who are involved with social services. Finally, this will have a long-term impact on preventing adverse childhood experiences and trauma to children in our communities.

**Q: Are there any hot topics in child welfare law right now?**

Angenette (Angie) Stephenson: There are always interesting hot topics in child welfare law, because there is constant tension between the very important societal values of keeping children safe and a parent's right to parent his or her child without governmental intrusion.

Lyana Hunter: Exploring what "reason-

able efforts in reunification" looks like is always a hot topic. Also, the potential of adding social workers to help parent attorneys is a very hot topic and one that I hope will be standardized practice at some point in the future.

J. Lee Gilliam: One of the current hot issues is whether foster care placement should be viewed as "a grace period for the parents to prove they deserve their child" or as an opportunity for the government to help the parents address issues like poverty or substance abuse with the primary goal of returning the child home. As a matter of practice, this is the difference between using child-family time as a "stick" which is withheld from the parent for, e.g., a positive drug test, or liberally provided to encourage maintenance of a strong parent-child bond. Another practical impact of the chosen approach is whether the parent's services plan has activities uniquely tailored to improve the parent's particular situation, or is it a "hoop" primarily used to build a case against the parent for a future termination of parental rights proceeding.

**Q: How do you stay current in your field?**

Matthew Jackson: The best way for me to stay current is to follow the information put out by the UNC School of Government, which includes frequent blog posts, publications, and quarterly court opinion summaries.

Lyana Hunter: I attend every training I can, usually organized by the Parent Defender's Office in conjunction with the UNC School of Government team. We are so fortunate to have these resources in our state!

J. Lee Gilliam: The UNC School of Government and the ABA provide listservs where professional colleagues both here and in other states share ideas and helpful resources.

**Q: How is certification important in this practice area?**

Wendy Sotolongo: The decisions courts make in child welfare proceedings are serious

and life changing. Removing a child from a parent's custody causes trauma to the child and interferes with a parent's constitutional right to parent their child. Yet, placement outside the home may be needed to keep the child safe from harm. It is critically important that the parent, their child, and the government all have high-quality legal representation so that the court can receive the information needed to balance competing interests and make quality decisions.

David Hord: The importance of having high quality representation in child welfare court proceedings cannot be understated. It is not the most well known or most fashionable area of the law, but cases that involve abused and neglected children, and potentially termination of parental rights, can be very difficult and delicate legal matters. All the parties in these cases (child welfare agencies, parents/caretakers, and children) deserve the highest quality representation, and the child welfare certification allows attorneys to be recognized for providing that representation.

**Q: What would you say to encourage other lawyers to pursue certification?**

Mona Leipold: Child welfare lawyers work tirelessly for their clients, with limited resources, staff, and time. They are often behind the scenes and go unrecognized for the work they do which contributes to the public welfare. They should seek certification to gain acknowledgment and respect for their hard work.

Deana Fleming: It sets you apart from other attorneys in your practice area, and it is a worthwhile personal achievement.

**Q: What's most rewarding about your work in child welfare?**

Matthew Jackson: The most rewarding part of my work is seeing that a child involved with our agency has become successful. Often, I read about the successes of "our children" in the newspaper or see them out in public where they are doing positive things.

Angenette Stephenson: As a former foster care social worker, I find child welfare legal work extremely rewarding, particularly in my current role of representing a county department of social services. There are so many situations where social workers are called upon to make social work decisions that have significant legal implications. I love the lightbulb moment when social workers begin to understand a statutory requirement, and I

enjoy working with them to develop strategies to ensure children are protected and live with family whenever possible.

David Hord: The list is a short one when naming the areas of the law that can have as positive an impact on the community as child welfare law. Our courts have the ability—and the responsibility—to positively impact the lives of the children and families under its jurisdiction. Selfishly, it is incredibly rewarding knowing that I can play a very small part in helping a child find a safe, stable, and permanent home.

**Q: Who are your role models?**

Matt McKay: Ulysses S. Grant at Shiloh who, when General Sherman observed how badly they had lost the day's battle, replied "Yep. Lick 'em tomorrow though."

Mona Leipold: Edward A. Pone, Cumberland County chief district court judge, retired.

**Q: What is one inspirational movie or book that has motivated your career path?**

Wendy Sotolongo: It didn't motivate my career path, but *My Cousin Vinny* is one of my favorite movies. While it's very funny, I also love the message that Vinny doesn't solve the case all by himself—he needs help from his friends and loved ones. I think it's a valuable lesson for all attorneys: It's okay to get help and support from each other and from our families and friends.

Matt Wunsche: Like so many lawyers, *To Kill a Mockingbird* is the story that inspired me to be a lawyer. It's such a unique legal story because it's told from the point of view of the children, particularly Scout. I think about that a lot while working in child welfare, because the kids affected by our cases should always be our priority and they see everything that is happening.

**Q: For BETA exam takers: How did you prepare for the exam?**

Lyana Hunter: I used the study guide and read most of the referenced statutes, etc. I also looked through the AND Manual published through the UNC School of Government, took notes, and re-read those. I definitely got flashbacks of studying for the bar exam.

Matt McKay: Basically, the same as one would prepare for law school or bar exam materials. I read and created an outline for the relevant portions of Chapter 7B of the NCGS from top to bottom, did the same with affiliated sections of code or regulations, then continued to review/condense/memo-

## First Class of Child Welfare Law Specialists

Sydney Batch, Raleigh  
Gail Carelli, Raleigh  
Rick Croutharmel, Raleigh  
Sara DePasquale, Chapel Hill  
Deana K. Fleming, Chapel Hill  
Joseph Lee Gilliam, Durham  
David F. Hord IV, Raleigh  
Lyana G. Hunter, Wilmington  
Matthew Jackson, Winterville  
Mona E. Leipold, Morganton  
Annick I. Lenoir-Peek, Durham  
Matthew B. McKay, Charlotte  
Reggie O'Rourke, Holly Springs  
Shannon Poore, Raleigh  
Wendy Sotolongo, Durham  
Angie Stephenson, Chapel Hill  
Matt Wunsche, Raleigh

size that material.

**Q: For initial committee members: What was the motivation to pursue a new specialty in child welfare law in North Carolina?**

Matt Wunsche: I think both to recognize the expertise that exists around the state in child welfare law, and to encourage folks to seek specialization and raise the level of practice in our courts. Developing and rewarding specialists will benefit everyone who comes into contact with the child welfare system.

Sara DePasquale: Those who regularly practice in child welfare law know how complex and unique it is. Although it involves families and children, it is vastly different from family law. Although juveniles are the subject of the court action, it is nothing like a juvenile delinquency case. Yet, in North Carolina, the practice of family law and juvenile delinquency are both specialties. A child welfare specialty was missing. Nationally, there is a child welfare law specialist certification, but that certification does not focus on North Carolina laws. The creation of this specialty recognizes the complexity and uniqueness of the practice in North Carolina, requiring knowledge of North Carolina laws and procedures. This specialty fills the gap that existed. ■

*For more information on board certification for lawyers, visit us online at [nclauspecialists.gov](http://nclauspecialists.gov).*



# Eyes on the Prize

BY ANONYMOUS

I'm ten years old and just won enough money performing in a group at a talent show to buy the toy I'd had my eye on for months. This is how the story of my first regret begins. The show, put on by my religious community, was aimed at raising money for a capital project. Others in my performance group decided to donate their winnings back to the capital project, and I was in a pickle. I wanted that toy so badly, but I wanted to look good in front of others even more. My brother, who was also in our winning group, pulled me aside and told me I'd regret it if I donated the money. Sure, it was a nice thing to do, but he knew I had plans for the winnings. He had plans, too, and he was going to keep his money. But for me, image was everything. So I donated my winnings and later that month I stole my brother's money and bought the toy I wanted.

That was me dead sober—two years before I would have my first drink.

Sometimes it feels easy to blame the shameful things in my life on alcohol—I am an alcoholic, after all. But the truth is, I was trying to run the show to look good and get exactly what I wanted since way before alcohol entered my life. It's important for me to remember that, because as hard as it was to stop drinking, the only way for me to stay stopped is if I treat the root of my problem—me and my selfish and self-centered tendencies.

By the time I arrived at the foot of the 12 steps—24 years after that talent show—I was a daily drinker. I needed the morning drink and I needed to continue drinking throughout the day. I was putting a fifth of vodka inside me every day and had been for the better part of ten years. And the only reason I sought help when I did was because the trouble got too big and the people at home had become too angry. I wasn't ready to stop. I was no more willing to put the drink away than I was ready to stop trying to control everything in my life. That's why my 12-step recovery journey included five years of stumbling over the first step.

Those five years of relapse were like hell. It

was a repeating pattern of keeping away from a drink, watching work and relationships slightly improve, and then going out to celebrate that improvement with a drink—or worse, going out to the bar because the improvement didn't fill the emptiness I felt inside. The partners at my law firm didn't know what to do with me. One month I was the model associate. Then came months or years where I was an unreliable and untrustworthy drain on the practice. Improvement was better than consequences, sure, but people being a little happier with me at home and at work was never enough to fill the emptiness inside. It didn't change the crazy in my head or that nagging feeling that life simply didn't feel worth living.

As I think back, I realize that the DWIs, eventually getting fired, and even the dissolution of my marriage were never the heaviest tolls on me. The heaviest toll was the feeling that life was a burden to me, and I was a burden on others. Unlike the jarring, acute consequences that happen and slowly dissipate, the heaviest toll feels like a slow burn that will never go away.

I eventually went to treatment and, as I was leaving, got connected with LAP. I started going to the Monday night meetings in Raleigh and signed a contract for monitoring and testing. There were plenty of supports put into place, and plenty of accountability measures. But I was still trying to figure out how to stay sober using my brain, trying to control all the pieces in my life. That never worked for very long, so predictably I went back to the only place I could find a little bit of relief—even if it was momentary. I now was having to work overtime trying to control all the pieces of my life. I'd stay sober Mondays until after the LAP meeting and then go on a bender that lasted until Thursday. And I'd try to time the system that flagged me once or twice a month for urine testing. Most times, I had the pattern figured out and was able to stop drinking for four days prior to testing.



That ensured a clean result. Some days, the system threw me a curve ball and I'd get flagged for testing while I was still drinking. So I'd drink a ton of water because I knew I could make the test come back "diluted"—"diluted" isn't a clean test, but it's better than failing. It meant I was too hydrated at the time of the test and that bought me three days to sober up before I had to test again.

It was a chaotic existence trying to manage all of that, while managing work and hiding my drinking from family and figuring out how to show up for my kids, if at all.

If I'm honest, I think I had the energy to keep doing that for many more years if that was required. Lawyers have an incredible capacity for enduring stress and chaos. But I was becoming disillusioned with the futility of brief relief from a drink—a relief that either gave way to depression after too many or regret the next morning. My bottom came in the spring of 2017. It was the night of my second DWI, which came almost five years to the day of my first. I realized that nothing had changed in my life. Five years had passed, and they felt wasted because I had absolutely nothing good to show for them. My life was slipping away, and I truly was living just to drink. Every ounce of strategy and intellectual study I had mustered didn't get

CONTINUED ON PAGE 46

# The Difficulty of Opining on Internet Advertising Programs Such as Google's LSA Program—Like Catching Smoke with Bare Hands

BY SUZANNE LEVER, ASSISTANT ETHICS COUNSEL

The Ethics Committee published its first formal ethics opinion pertaining to the internet in 1996. In RPC 239 (October 18, 1996), the Ethics Committee addressed the propriety of a law firm having its own website. RPC 239 boldly states that it is permissible for a lawyer to display information about his legal services on “a site on the World Wide Web which can be accessed via the Internet, a global network of interconnected computers.”

In 1996, the predominant ethical issue pertaining to internet advertising was the permissible content on law firm websites. Recent inquiries, however, have more to do with the use of intermediary advertising platforms than the content of the law firm's website. These inquiries lead to the unique situation of ethics counsel trying to understand and evaluate complex operations of nonlegal entities, while acknowledging that the State Bar's authority is limited to regulating a lawyer's participation in internet advertising programs and not the advertising platforms themselves. Furthermore, the Bar does not want to discourage the development of internet platforms that increase or simplify the public's access to legal services. Finally, opining on internet advertising platforms is problematic because internet advertising programs tend to appear, evolve, and then disappear at a rapid rate, thus leading to the possibility of a formal ethics opinion becoming moot even before the ink is dry.

For these reasons, the Ethics Committee has been hesitant to formally opine on specific internet advertising platforms. Nonetheless, in a good faith effort to provide guidance to the bar, and in deference to the importance of confidentiality in the legal

profession, the Ethics Committee published Proposed 2021 FEO 5 (Lawyer Participation in Pay-Per-Lead Advertising Program). The feature of the advertising program that resulted in the inquiry to the Ethics Committee was the recording and retention of potential client communications by the advertising platform company. In addition, the communications could be disclosed to third parties subject to the company's privacy policies. Concern as to the vulnerability of possibly confidential information relating to a legal matter motivated the Ethics Committee to opine on the advertising program. Proposed 2021 FEO 5 concluded that the structure of the advertising program renders a lawyer's participation in it prejudicial to the administration of justice in violation of Rule 8.4(d) because the structure does not comply with a person's reasonable and historic expectations of privacy and exclusivity in communicating with a lawyer. Moreover, the structure allows important client information to be vulnerable to unauthorized and potentially harmful disclosure.

After the proposed opinion was published for comment, members of the bar criticized the proposed opinion's conclusion. There was a general theme throughout the comments that today's consumers know and understand that nothing is really private on the internet—consumers are aware their communications are being monitored to some extent. In addition, we received criticism that the privacy policy that governs the recordings at issue (allowing disclosure of recordings to certain third parties) are indistinguishable from the privacy policies of communications that are retained by numerous other internet services and applications.

Therefore, prohibiting law firms from participating in this advertising program would also prohibit lawyers from using these other internet services and applications, which would ultimately do more harm to the administration of justice than good—specifically regarding the accessibility of legal services to the public. Similarly, some criticisms suggested that substantial technical questions needed to be answered about the advertising program and how it is similar to other widely used technologies before the Ethics Committee issued an opinion on the matter. Other comments suggested that the proposed opinion goes too far in applying a lawyer's duty of confidentiality to individuals who are not current or prospective clients.

Ethics staff at the State Bar is appreciative of the thoughtful feedback received on the proposed opinion. Indeed, such engagement is an important and valuable part of self-regulation. A review of these thoughtful comments led the Ethics Committee to conclude that the recordings at issue are not uniquely vulnerable to harmful third-party disclosures, and that adopting a specific ethics opinion related to this particular advertising platform would not benefit the legal profession or the consumers of legal services. Therefore, at its meeting in April 2022, the Ethics Committee withdrew Proposed 2021 FEO 5.

However, lawyers are reminded of their duty to make reasonable investigations into any advertising program—or technology service—before deciding whether to participate in the program or utilize the technology. (See the discussions set out in 2008 FEO 5, Web-Based Management of Client Records, and 2011 FEO 6 regarding SAAS providers storing confidential client information). A

lawyer should evaluate the vendor's experience, stability, and reputation; evaluate the vendor's measures for safeguarding the security and confidentiality of stored information; confirm the vendor's compliance with privacy laws such as the Stored Communications Act (18 U.S.C. §§ 2701-2713); perform "due diligence" as to operation and privacy policies of the particular vendor program; educate law firm employees on proper law firm procedures relating to the program; and continue to monitor evolution of the vendor and the particular service to ensure compliance with applicable laws and the Rules of Professional Conduct.

Specifically in relation to the use of intermediary services,<sup>1</sup> lawyers need to remember that the duty of confidentiality set out in the Rules of Professional Conduct only applies in the context of an attorney-client relationship. Internet advertising programs have significantly blurred the line between a potential client and a prospective client. Therefore, when using intermediary advertising programs or initial intake services, a lawyer should take steps to ensure that a potential client does not inadvertently turn into a prospective client to which the duties set out in Rule 1.18 apply. A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. As stated in comment [2] to

Rule 1.18:

[A] consultation is likely to have occurred if a lawyer, either in person or through the lawyer's advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response. In such a situation, to avoid the creation of a duty to the person under this Rule, a lawyer has an affirmative obligation to warn the person that a communication with the lawyer will not create a client-lawyer relationship and information conveyed to the lawyer will not be confidential or privileged. *See also* comment [4].

If employees are properly educated, appointment-setting phone calls should neither create a reasonable expectation of privacy nor delve into information beyond what is necessary to avoid conflicts of interest. Comment [4] to Rule 1.18 provides that, to avoid acquiring disqualifying information from a prospective client, "a lawyer considering whether or not to undertake a new matter should limit the initial consultation to only such information as reasonably appears necessary for that purpose."

In addition, the responsibility to warn the person that a communication with the law firm will not create a client-lawyer relation-

ship and that information conveyed to the lawyer will not be confidential or privileged will often fall on nonlawyer employees. The lawyer must ensure that these employees provide the necessary disclosures and obtain the necessary consent. *See* Rule 5.3. For example, lawyers may want to instruct employees who answer calls forwarded by an intermediary advertising program to instruct the potential client in the following fashion:

Because you called us by clicking on an advertisement, the advertising company is able to record this call and anything you say will not be confidential. But if you will give me your phone number, I will be happy to call you back on a private line.

We've come a long way since opining on a lawyer's mere presence on the "World Wide Web." As technology advances, services never thought possible become our reality (and the bane of ethics staff's existence). Though it may seem difficult to keep up, lawyers have a duty to remain technologically competent. *See* Rule 1.1, cmt. [8]. And from both an ethical and practical perspective, a good rule of thumb is that, like most things, if you're going to use something, you better know what it does. ■

## Endnote

1. Lawyers should also review new Rule 7.4 addressing a lawyer's participation in intermediary organizations.

## LAP (cont.)

me sober and couldn't make me happy. I was defeated. And in that moment of clarity, I realized I could never "will" myself into sobriety or happiness. The only people who drank like me that I saw actually look and feel and live better, were alcoholics who showed up, surrendered, listened, and worked the 12 steps.

I decided to tell myself to shut up every single time I thought I knew something, and I worked with a sponsor who took me through the steps in a matter of months. I fellowshiped and hit meetings, and grew to love spending time with friends in my 12-step program, as well as LAP. People say all the time that if an alcoholic or addict drinks or drugs, they could die. And that's true. But when I say that my life depended on working the 12

steps, I mean that my shot at living any kind of life worth living depended on it. It wasn't until I had a spiritual experience as the result of working the steps that I understood what it truly meant to live. What it meant to have peace. What it meant to feel useful. What it meant to experience self-esteem by doing estimable things.

Today, I am sober and happy at the same time, a miracle I never thought could happen. And it's a magical feeling. It's incredible how things that used to feel small or frivolous are some of the most gratifying parts of my life. That feeling of usefulness sustains me, and the ability to show up for others is a constant source of gratitude. All that time that I spent in LAP pretending to be sober and dodging urine testing—I was so busy covering the tracks behind me that I didn't see the set of steps laid out before me. I didn't realize how fortunate I

was to have found a recovery community, a special fellowship that not only understood how hard it is to live in self, but also the unique challenges of doing that as a lawyer. There's a special camaraderie that exists among us in LAP. I'm grateful—for my sobriety, for LAP, and for all of you who are leading the way for law students, lawyers, and judges who need help like I did. ■

*The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers, judges, and law students, which helps address problems of stress, depression, alcoholism, addiction, or other problems that may impair a lawyer's ability to practice. For more information, go to [nclap.org](http://nclap.org) or call: Cathy Killian (Charlotte/areas west) at 704-910-2310, or Nicole Ellington (Raleigh/down east) at 919-719-9267.*



# Amendments Pending Supreme Court Approval

## Proposed Amendments to Rulemaking Procedures

27 N.C.A.C. 1A, Section .1400, Rulemaking Procedures.

The proposed amendment increases the timeframe within which a rule or rule amendment adopted by the council must be transmitted to the Supreme Court for its review.

## Proposed Amendment to the Rule on Petitions for Inactive Status

27 N.C.A.C. 1D, Section .0900, Procedures for Administrative Committee

The proposed amendment will give the secretary of the State Bar the discretion to transfer an active member to inactive status upon the completion of a petition to transfer to inactive status in the same manner that the secretary has the discretion to reinstate inactive members.

## Proposed Amendments to the Rules Governing the Continuing Legal Education Program

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Continuing Legal Education Program

The proposed amendments add “Diversity, Inclusion, and Elimination of Bias Training” to the definitions in Rule .1501 and, in Rule .1518, include such training in the 2022 CLE requirements for active members of the State Bar.

## Proposed Amendments to the Certification Standards for the Criminal Law Specialty

27 N.C.A.C. 1D, Section .2500, Rules Governing the Certification Standards for the Criminal Law Specialty

The proposed amendments adjust the criminal law specialty rules to recognize separate subspecialties in federal criminal law, state criminal law, and juvenile delinquency law. Currently, the rules recognize a combined federal/state criminal law specialty, a state criminal law subspecialty, and a juvenile delinquency law subspecialty. Specialists currently certified in the federal/state criminal law specialty will remain so until their next recertification when they will have to qualify for recertification in federal criminal law or state criminal law or in both subspecialties.

## Proposed Amendments to the Rules of Professional Conduct

27 N.C.A.C. 2, Rules of Professional Conduct, Rule 0.1, Preamble

The proposed amendment adds a paragraph to the Preamble on equal treatment of all persons encountered when acting in a professional capacity.

27 N.C.A.C. 2, Rule 1.1, Competency

The proposed amendment to Rule 1.1 adds new comment [9] which states that awareness of implicit bias and cultural differences enhances a lawyer’s competency.

27 N.C.A.C. 2, Rule 1.6, Confidentiality of Information

## Highlights

- Proposed administrative overhaul of the CLE rules and regulations (see page 10 of the *Journal*)
- Proposed amendment to Rule 1.19, Sexual Relations with Clients Prohibited

The proposed amendment adds a sentence to the comment to Rule 1.6 clarifying that information acquired during a professional relationship with a client does not encompass information acquired through legal research.

27 N.C.A.C. 2, Rule 1.9, Duties to Former Clients

The proposed amendments clarify when a lawyer who has formerly represented a client may use or reveal information relating to the former representation.

## Published on Behalf of the Board of Law Examiners: Proposed Amendments to the Board of Law Examiners’ Rules Governing Admission to the Practice of Law

Section .0500, Requirements for Applicants

The proposed amendments eliminate the North Carolina state-specific component requirement for general and Uniform Bar Examination transfer applicants.

# Proposed Amendments

At its meeting on April 22, 2022, the council voted to publish for comment the following proposed rule amendments:

## Proposed Amendments to the CLE Rules and Regulations

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Continuing Legal Education Program; 27 N.C.A.C. 1D, Section .1600, Regulations Governing the Administration of the Continuing Legal Education Program

The proposed amendments reimagine the procedures and processes, including fees, for regulating compliance with mandatory CLE. Additional information and the full text of the proposed amendments can be found on page 10 of the *Journal*.

## Proposed Amendments to the Rules Governing the Paralegal Certification Program

27 N.C.A.C. 1G, Section .0100, The Plan for Certification of Paralegals

The proposed amendments revise administrative requirements for the Board of Paralegal Certification and permit a member of the board who is a certified paralegal to serve as chair.

### .0105, Appointment of Members; When; Removal

(a) ...

(b) Procedure for Nomination of Candidates for Paralegal Members.

(1) Composition of Nominating Committee. At least 60 days prior to a meeting of the council at which one or more paralegal members of the board are subject to appointment for a full three-year term, the board shall appoint a nominating committee comprised of seven certified paralegals as follows: selected by the board. The nominating committee should consist of active certified paralegals, including but not limited to representatives from paralegal and legal assistant associations, organizations, or divisions of legal organizations, as well as independent paralegals (not employed by a law firm, government entity, or legal department).

(i) ~~A representative selected by the North Carolina Paralegal Association;~~

(ii) ~~A representative selected by the North Carolina Bar Association Paralegal Division;~~

(iii) ~~A representative selected by the North Carolina Advocates for Justice Legal Assistants Division;~~

(iv) ~~Three representatives from three local or regional paralegal organizations to be selected by the board; and~~

(v) ~~An independent paralegal (not employed by a law firm, government entity, or legal department) to be selected by the board.~~

(2) Selection of Candidates. The nominating committee shall meet within 30 days of its appointment to select at least two but no more than five certified paralegals as candidates for each paralegal member vacancy on the board for inclusion on the ballot to be mailed sent to all active certified paralegals.

(3) Vote of Certified Paralegals. At least

30 days prior to the meeting of the council at which a paralegal member appointment to the board will be made, ~~a ballot shall be mailed or a notice of online voting shall be emailed or mailed to all active certified paralegals at each certified paralegal's physical or email address of record on file with the North Carolina State Bar.~~ vote on the list of candidates provided by the nominating committee shall be conducted of all active certified paralegals in a manner approved by the board. Notice of the vote shall be sent to all active certified paralegals using contact information on file with the North Carolina State Bar, shall contain instructions on how to participate in the vote, and shall state how many paralegal member positions on the board are subject to appointment and the names of the candidates selected by the nominating committee for each such position. The ballot or notice shall be accompanied by written instructions, and shall state how many paralegal member positions on the board are subject to appointment, the names of the candidates selected by the nominating committee for each such position, and when and where the ballot should be returned. If balloting will be online, the notice shall explain how to access the ballot on the State Bar's paralegal website and the method for voting online. Write in candidates shall be permitted and the instructions shall so state. Each ballot sent by mail shall be sequentially numbered with a red identifying numeral in the upper right hand corner of the ballot. Online balloting shall be by secure log in to the State Bar's paralegal website using the certified paralegal's identification number and personal password. Any certified paralegal who does not have an email address on file with the State Bar shall be mailed a ballot. The board shall maintain appropriate records respecting how many ballots or notices are sent to prospective voters in each election as well as how many ballots are returned. Only original ballots will be accepted by mail. Votes cast or received after the deadline stated in the notice. Ballots received after the deadline stated on the ballot or the email notice will not be counted. The names of the two candidates receiving the most votes for each open paralegal member position shall be the nominees

## Comments

The State Bar welcomes your comments regarding proposed amendments to the rules. Please send your written comments to Alice Neece Mine, The North Carolina State Bar, PO Box 25908, Raleigh, NC 27611.

## The Process

Proposed amendments to the Rules of the North Carolina State Bar are published for comment in the *Journal*. They are considered for adoption by the council at the succeeding quarterly meeting. If adopted, they are submitted to the North Carolina Supreme Court for approval. **Unless otherwise noted, proposed additions to rules are printed in bold and underlined; deletions are interlined.**

submitted to the council.

...

### .0108, Succession

Each member of the board shall be entitled to serve for one full three-year term and to succeed himself or herself for one additional three-year term. Each certified paralegal member shall be eligible for reappointment by the council at the end of his or her term without appointment of a nominating committee or vote of all active certified paralegals as would be otherwise required by Rule .0105 of this subchapter. Thereafter, no person may be reappointed without having been off of the board for at least three years; provided, however, that any member who is designated chairperson at the time that the member's second three-year term expires may serve one additional year on the board in the capacity of chair.

### .0109, Appointment of Chairperson

The council shall appoint the chairperson of the board from among the ~~lawyer~~ members of the board. The term of the chairperson shall be one year. The chairperson may be reappointed thereafter during his or her tenure on the board. The chairperson shall

preside at all meetings of the board, shall prepare and present to the council the annual report of the board, and generally shall represent the board in its dealings with the public.

### Proposed Amendments to the Rules of Professional Conduct

27 N.C.A.C. 2, Rules of Professional Conduct, Rule 1.19, Sexual Relations with Clients Prohibited

The proposed amendments specify that the prohibitions in the rule apply to sexual conduct including sexually explicit communications with a client or others involved in a legal matter.

#### Rule 1.19 Sexual ~~Relations~~ Conduct With Clients Prohibited

(a) A lawyer shall not ~~have engage in sexual relations activity with a current client of the lawyer.~~ For purposes of this Rule, “sexual activity” means:

- (1) sexual intercourse; or
- (2) any touching of a person or causing such person to touch the lawyer for the purpose of arousing or gratifying the sexual desire of either party.

(b) A lawyer shall not engage in sexual communications with a client. For purposes of this Rule, “sexual communications” means:

- (1) requesting or actively participating in sexually explicit conversation; or
- (2) requesting or transmitting messages, images, audio, video, or other content that contain nudity or sexually explicit material.

Communications that contain nudity or sexually explicit content but are relevant to the client’s legal matter and are made in furtherance of the representation are not “sexual communications” for purposes of this Rule.

~~(b) Paragraph (a) shall not apply if a consensual sexual relationship existed between the lawyer and the client before the legal representation commenced.~~

(c) A lawyer shall not request, require, or demand sexual ~~relations~~ activity or sexual communications with a client incident to or as a condition of any professional representation.

(d) Scope.

(1) The prohibitions in this Rule apply to:

- (A) current clients;
- (B) an individual or a representative of an organization who is consulting with a lawyer about the possibility of forming

a client-lawyer relationship, until the lawyer declines the representation; and  
(C) representatives of a current client with whom the lawyer is authorized to communicate regarding the representation.

(2) Paragraph (a) shall not apply if a consensual sexual relationship existed between the lawyer and the person identified in (d)(1) before the legal representation or consultation commenced.

(3) Paragraph (b) shall not apply if the lawyer and the person identified in (d)(1) consensually engaged in sexual communications before the legal representation or consultation commenced.

(4) For purposes of this rule, “sexual relations” means:

- (1) ~~Sexual intercourse; or~~
- (2) ~~Any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party.~~

(e) For purposes of this rule, “lawyer” means any lawyer who assists in the representation of the client but does not include other lawyers in a firm who provide no such assistance.

#### Comment

[1] Rule 1.7, the general rule on conflict of interest, has always prohibited a lawyer from representing a client when the lawyer’s ability competently to represent the client may be impaired by the lawyer’s other personal or professional commitments. Under the general rule on conflicts and the rule on prohibited transactions (Rule 1.8), relationships with clients, whether personal or financial, that affect a lawyer’s ability to exercise his or her independent professional judgment on behalf of a client are closely scrutinized. The rules on conflict of interest have always prohibited the representation of a client if a sexual relationship with the client presents a significant danger to the lawyer’s ability to represent the client adequately. The present rule clarifies that a sexual relationship conduct with a client is damaging to the client-lawyer relationship and creates an impermissible conflict of interest that cannot be ameliorated by the consent of the client.

...

[3] ~~A~~ Sexual relationship conduct between a lawyer and a client may involve

unfair exploitation of the lawyer’s fiduciary position. Because of the dependence that so often characterizes the attorney-client relationship, there is a significant possibility that ~~a sexual relationship conduct~~ with a client resulted from the exploitation of the lawyer’s dominant position and influence. Moreover, if a lawyer permits the otherwise benign and even recommended client reliance and trust to become the catalyst for ~~a sexual relationship conduct~~ with a client, the lawyer violates one of the most basic ethical obligations; i.e., not to use the trust of the client to the client’s disadvantage. . . .

Impairment of the Ability to Represent the Client Competently

[4] A lawyer must maintain his or her ability to represent a client dispassionately and without impairment to the exercise of independent professional judgment on behalf of the client. ~~The existence of a~~ Sexual relationship conduct between lawyer and client, under the circumstances proscribed by this rule, presents a significant danger that the lawyer’s ability to represent the client competently may be adversely affected because of the lawyer’s emotional involvement. This emotional involvement has the potential to undercut the objective detachment that is demanded for adequate representation. ~~A~~ Sexual relationship conduct also creates the risk that the lawyer will be subject to a conflict of interest. . . .

No Prejudice to Client

[5] ~~The prohibition on~~ upon representing a client with whom a sexual relationship conduct with a client develops applies regardless of ~~the absence of a showing of whether it prejudices to the client and regardless of whether the relationship conduct is consensual.~~

Prior Consensual Relationship

[6] Sexual relationships conduct that pre-dates the client-lawyer relationship ~~are~~ is not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are not present when the sexual relationship conduct exists prior to the commencement of the client-lawyer relationship. ...

No Imputed Disqualification

[7] The other lawyers in a firm are not disqualified from representing a client with whom the lawyer has ~~become intimate~~ engaged in sexual conduct. The potential

CONTINUED ON PAGE 54



# Council Publishes Proposed Amendments to Rule on Sexual Conduct with a Client; Committee Publishes Three New Opinions

## Council Actions

At its meeting on April 22, 2022, the State Bar Council adopted the ethics opinion summarized below:

### 2022 Formal Ethics Opinion 1

#### *Attorney Serving Dual Role of Guardian ad Litem and Advocate*

Opinion rules that an attorney appointed by the court as the guardian ad litem and the attorney advocate in an abuse, neglect, and dependency proceeding may not testify as a witness unless directed to do so by the court.

In addition to adopting the opinion described above, and following favorable votes from both the Ethics Committee and the Executive Committee, the council adopted and approved for transmission to the Supreme Court the proposed amendments to Rule 1.6 and Rule 1.9 regarding a lawyer's professional responsibility in handling confidential client information that were published during the last quarter. The council also approved the publication of proposed amendments to Rule 1.19 addressing prohibited sexual conduct with a client. The full text of the proposed amendments is published in this edition of the *Journal* and on the State Bar's website.

## Ethics Committee Actions

At its meeting on April 21, 2022, in addition to a report from the subcommittee studying the amendments to Rule 1.19 referenced above, the Ethics Committee received a report from the subcommittee studying the potential adoption of anti-discrimination language in the text of the Rules of Professional Conduct. Citing the pending federal litigation challenging various antidiscrimination provisions in other states' Rules of Professional Conduct, the subcommittee voted to pause its deliberations on the subject until the courts offer additional guidance on the constitutionality of

such rules. The subcommittee expects to continue its work in the future.

The Ethics Committee also considered a total of seven ethics inquiries, including the opinion adopted by the council referenced above. A new inquiry concerning a lawyer's ability to call a client-retained public adjuster as an expert witness was sent to subcommittee for further study. The committee withdrew one pending opinion—Proposed 2021 FEO 5, Lawyer Participation in "Google Screened" Pay-Per-Lead Advertising Program—and instead issued guidance via the ethics article published in this *Journal* on page 45. The committee also approved an ethics advisory opinion addressing whether a law firm may represent nonprofit organizations and private clients in estate matters in which bequests are made to the firm's nonprofit organizational clients. Lastly, the committee approved the publication of three new proposed opinions, which appear below.

### Proposed 2022 Formal Ethics Opinion 2

#### **Limited Representation in a Criminal Matter**

**April 21, 2022**

*Proposed opinion rules that a privately retained lawyer may provide limited representation to a criminal defendant who has been appointed counsel if the limitation is reasonable under the circumstances.*

#### **Facts:**

Criminal defendant qualifies as indigent and is appointed counsel. Private lawyer ("Lawyer") is contacted by Defendant or Defendant's family for potential representation in filing a motion for bond on behalf of Defendant. If Lawyer takes on the representation, he will make a limited appearance solely for the purpose of representing Defendant at

## *Rules, Procedure, Comments*

All opinions of the Ethics Committee are predicated upon the North Carolina Rules of Professional Conduct. Any interested person or group may submit a written comment—including comments in support of or against the proposed opinion—or request to be heard concerning a proposed opinion. The Ethics Committee welcomes and encourages the submission of comments, and all comments are considered by the committee at its next quarterly meeting. Any comment or request should be directed to the Ethics Committee at [ethicscomments@ncbar.gov](mailto:ethicscomments@ncbar.gov) no later than June 30, 2022.

## *Public Information*

The Ethics Committee's meetings are public, and materials submitted for consideration are generally NOT held in confidence. Persons submitting requests for advice are cautioned that inquiries should not disclose client confidences or sensitive information that is not necessary to the resolution of the ethical questions presented.

the bond hearing. Lawyer is informed that Defendant has been appointed counsel in the underlying criminal matter.

**Inquiry #1:**

May Lawyer communicate with Defendant knowing Defendant is represented by appointed counsel?

**Opinion #1:**

Yes. The prohibition on a lawyer speaking with a represented individual does not apply in this scenario. Rule 4.2 provides that, during the representation of a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. However, the comment to Rule 4.2 provides, “[t]his Rule does not prohibit a lawyer who does not have a client relative to a particular matter from consulting with a person or entity who, though represented concerning the matter, seeks another opinion as to his or her legal situation.” Rule 4.2, cmt. [2]. Lawyer is therefore permitted to meet with Defendant to discuss potential representation. Lawyer should, but is not required to, inform appointed counsel of his participation and advice. Rule 4.2, cmt. [2].

**Inquiry #2:**

May Lawyer undertake a limited representation of Defendant knowing Defendant has appointed counsel?

**Opinion #2:**

Yes, if the limitation is reasonable under the circumstances, Lawyer has fully informed Defendant of the possible ramifications of privately retaining Lawyer for the limited representation, and Defendant consents.

The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer’s services are made available to the client. Rule 1.2(c); Rule 1.2, cmt. [6]. Although Rule 1.2 “affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances.” Rule 1.2, cmt. [7].

Before agreeing to represent Defendant on a limited basis for the sole purpose of handling a bond hearing, Lawyer must consider whether the limited representation is reasonable under the circumstances. As stated in the facts, Defendant has qualified as indigent and has been appointed counsel. Lawyer must therefore consider the effect his representation will have on Defendant’s ability to

remain indigent and qualify for appointed counsel. N.C. Gen. Stat. § 7A-450 (Indigency; definition; entitlement; determination; change of status) and N.C. Gen. Stat. § 7A-453 (Duty of custodian of a possibly indigent person; determination of indigency) govern. Whether Defendant remains indigent considering the ability to pay Lawyer for the bond hearing is a legal question outside the purview of the Rules of Professional Conduct. Therefore, no opinion is expressed as to whether Defendant remains indigent despite having retained Lawyer. Nevertheless, Lawyer has a duty to review the law and render objective, candid, and thorough advice to Defendant regarding the same. *See* Rule 1.1, Rule 1.4(b), and Rule 2.1. Lawyer must discuss the limitations of representation and the effect, if any, the representation will have on Defendant’s qualification as indigent to enable Defendant to make an informed decision regarding the representation. Rule 1.2(a), Rule 1.2(c), and Rule 1.4(b). If Defendant consents to the limited representation after Lawyer’s thorough review and explanation of the legal ramifications of the limited, private representation, Lawyer must inform the court of his limited appearance so that the court may also evaluate Defendant’s indigent status. *See* Rule 3.3(a)(1); RPC 52. At the earliest time possible, Lawyer should also inform the appointed counsel of his involvement, preferably prior to accepting the representation, to ensure Defendant is sufficiently protected and informed of the impact the limited representation may have on Defendant’s ability to continue representation with appointed counsel.<sup>1</sup> Failing to communicate Lawyer’s involvement with appointed counsel under these circumstances might be prejudicial to the administration of justice. Rule 8.4(d).

If Lawyer obtains Defendant’s informed consent to limit representation to just the bond hearing, Lawyer must provide competent and diligent representation to Defendant and must not do anything that jeopardizes Defendant’s case. Rule 1.1, Rule 1.3, and Rule 8.4(d). Rule 1.1 provides in pertinent part, “[c]ompetent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” Before Lawyer can make a limited appearance, Lawyer must educate himself on Defendant’s case, which includes understanding the underlying charges. Lawyer must therefore communi-

cate with Defendant and the district attorney’s office and review any available discovery. Competent representation also requires Lawyer to communicate with appointed counsel.

**Inquiry #3:**

Assume Lawyer has obtained Defendant’s consent to limit representation and agrees to accept the legal fee from Defendant’s family in accordance with Rule 1.8(f). May Lawyer withdraw if the family is unable to pay Lawyer’s fee?

**Opinion #3:**

It depends. Lawyer may limit representation if the limitation is reasonable under the circumstances. *See* Opinion #2. Generally, a lawyer should not accept representation in a matter unless it can be performed competently, promptly, without conflict of interest, and to completion. Rule 1.16, cmt. [1]. Additionally, “[u]nless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer’s employment is limited to a specific matter, the relationship terminates when the matter has been resolved.” Rule 1.3, cmt. [4].

Before Lawyer agrees to represent Defendant in a limited capacity, Lawyer must determine whether his fee can be paid in full. If not and Lawyer is unwilling to finish representation without getting paid, the limitation on representation is not reasonable in accordance with Rule 1.2 and Lawyer must therefore decline the representation. However, should Lawyer accept representation but later conclude that he cannot continue representation because the family is unable to continue paying his fee, Lawyer may withdraw only if withdrawal can be accomplished without material adverse effect on the interests of the client. Rule 1.16(b)(1). Lawyer must also seek the court’s permission to withdraw. Rule 1.16(c). Prior to seeking the court’s permission to withdraw, Lawyer must inform the client of his intent to withdraw. Lawyer must either obtain the client’s consent to withdraw or provide client with notice of hearing on Lawyer’s motion to withdraw. Furthermore, before Lawyer can withdraw, Lawyer has a duty to protect Defendant’s interests, and therefore Lawyer must communicate with appointed counsel to ensure the withdrawal will not cause irrevocable harm to Defendant. Rule 8.4(d).

#### **Inquiry #4:**

Is the analysis in this opinion applicable to lawyers who limit representation of a criminal defendant in both misdemeanor and felony cases?

#### **Opinion #4:**

Yes. Under Rule 1.2(c), a lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances. Whether limitation is allowed is not contingent on whether the pending criminal matter is a misdemeanor or a felony. Instead, the determining factor should be based on the class of charges levied against the defendant. The lawyer should also consider the possible levels of punishment based on the charges. For example, a series of multiple felonies that will result in significant punishment for Defendant may make limiting representation unreasonable under the rule. Similarly, limited representation may be unreasonable when representing a client on a single misdemeanor charge that by itself generally will not result in significant punishment, but when added to Defendant's prior record increases the punishment. Therefore, the lawyer must consider these and other factors and review the totality of the circumstances to determine if limited representation is reasonable under the circumstances.

#### **Endnote**

1. Lawyer should endeavor to involve appointed counsel and discuss the best strategies to ensure Defendant is protected and not harmed by Lawyer's limited role. Lawyer should also discuss with appointed counsel the evidence he intends to introduce at the bond hearing, including a list of witnesses and the expected testimony of those witnesses.

#### **Proposed 2022 Formal Ethics**

##### **Opinion 3**

##### **Inclusion on Allied Professional's List of Recommended Lawyers**

**April 21, 2022**

*Proposed opinion rules that a lawyer may be included in an allied professional's list of recommended lawyers provided that the professional does not disseminate the lawyer's name and information in a manner that is prohibited by the Rules of Professional Conduct.*

#### **Inquiry #1:**

Doctor works at a local medical office. Doctor often treats patients who suffered injuries resulting from car accidents. On occasion, these patients ask Doctor if Doctor knows of any lawyers who could represent the patient regarding their involvement in

the car accident. Doctor has decided to create and offer to patients a list of lawyers to assist the patient in identifying and choosing a lawyer.

Lawyer focuses his practice on personal injury matters. Doctor has previously worked with patients represented by Lawyer and believes Lawyer can provide reliable representation to patients. Doctor has asked Lawyer if she may recommend Lawyer to her patients by including Lawyer on her list of lawyers.

May Lawyer agree to his inclusion on Doctor's list of lawyers?

#### **Opinion #1:**

Yes, provided that there is no quid pro quo exchange for recommending Lawyer's services, and provided that Lawyer has not instructed Doctor to engage in improper solicitation of Doctor's patients for legal services offered by Lawyer and Lawyer does not understand Doctor to engage in improper solicitation.

Rule 7.2 prohibits a lawyer from compensating, giving, or promising anything of value to a person for recommending the lawyer's services. Rule 7.2(b); see 2006 FEO 7; 2007 FEO 4. A lawyer offering to refer a client to an allied professional in exchange for a referral from the professional to the lawyer's practice, rather than based on the professional's independent analysis of the lawyer's qualifications, constitutes an improper quid pro quo. 2006 FEO 7.

Rule 7.3 defines solicitation as "a communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services." Rule 7.3(a). Rule 7.3(b) prohibits a lawyer from soliciting professional employment "by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or law firm's pecuniary gain[.]" A lawyer may not engage in conduct that would constitute a violation of the Rules of Professional Conduct through the acts of another. Rule 8.4(a).

In 2007 FEO 4, this committee concluded that a lawyer may provide business cards or a brochure containing information about the lawyer's practice to an allied professional for distribution to the professional's patients/clients so long as the lawyer does not understand the professional will engage in in-person solicitation on the lawyer's behalf. In reaching this conclusion, the committee cited the absence of "[t]he potential

for abuse or overreaching" when a lawyer passively provides information about his practice to an allied professional for voluntary collection by potentially interested clients/patients of the professional. *Id.*

The same can be said for the present situation. Doctor has described the proposal as a list of potential legal service providers to be given to interested patients who are in need of and/or seeking legal services. Lawyer has not instructed Doctor to solicit business from Doctor's patients for Lawyer, and Lawyer has no reason to expect that Doctor will engage in improper solicitation of Doctor's patients. Furthermore, Lawyer's inclusion on the list is not in exchange for referrals to Doctor's practice in the manner of an improper quid pro quo. See RPC 57.

#### **Inquiry #2:**

May Lawyer initiate and pursue a conversation with Doctor to inform Doctor of Lawyer's practice and services for the purpose of having Doctor provide her patients with Lawyer's information or place Lawyer on Doctor's "recommended lawyers" list to be given to patients?

#### **Opinion #2:**

Yes, provided that Lawyer does not instruct Doctor to engage in improper solicitation of Doctor's patients for legal services offered by Lawyer and Lawyer does not understand Doctor to engage in improper solicitation, and provided that there is no quid pro quo exchange for recommending Lawyer's services. See Opinion #1.

#### **Inquiry #3:**

Same scenario as Inquiry #1, except Lawyer has learned that, after agreeing to be included in Doctor's list of lawyers, Doctor is refusing to treat patients unless the patient has legal representation from someone on Doctor's list.

May Lawyer continue his inclusion in Doctor's list of lawyers?

#### **Opinion #3:**

No. Rule 7.3(c) prohibits a lawyer from soliciting professional employment if "the solicitation involves coercion, duress, or harassment." Rule 7.3(c)(2). In this scenario, Lawyer has learned that Doctor is creating duress for her patients and coercing patients into obtaining legal representation from Lawyer by refusing to provide medical

treatment unless the patient obtains legal representation. Lawyer could not engage in such conduct himself, and therefore cannot engage in conduct through the actions of Doctor with whom Lawyer has associated for the purpose of disseminating information about Lawyer's practice and legal services. Rule 8.4(a). Upon learning of Doctor's conduct, and given the nature of Doctor's conduct, Lawyer must immediately correct Doctor's conduct or request his removal from Doctor's list. *Compare* Rule 7.4 (requiring a lawyer to terminate his relationship with an intermediary organization upon learning the organization failed to comport its conduct to the requirements in Rule 7.4 despite the lawyer's attempt to correct the conduct).

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**Proposed 2022 Formal Ethics  
Opinion 4  
Billing Considerations for Overlapping  
Legal Services  
April 21, 2022**

*Proposed opinion rules that a lawyer may not separately bill multiple clients a full hourly rate when the lawyer provides legal services to all clients simultaneously. Any increase in the lawyer's efficiency in providing legal services must be passed on to the client.*

**Inquiry #1:**

Lawyer is flying to Seattle from Raleigh for a deposition in Client A's case. Lawyer's fee agreement with Client A provides that Lawyer may charge Client A \$150 per hour for time spent traveling for purposes of the representation.

During the flight, Lawyer worked for three hours on a brief in Client B's case. Lawyer's fee agreement with Client B provides that Lawyer may charge Client B \$300 for every hour of legal work completed in Client B's case.

May Lawyer bill Client A for four hours of travel time to Seattle and Client B for three hours of legal work completed during the flight to Seattle, for a total of seven hours billed time?

**Opinion #1:**

No.

Rule 1.5(a) prohibits a lawyer from charging or collecting "clearly excessive" fees. Comment 6 to Rule 1.5 states that, "[a] lawyer should not exploit a fee arrangement based primarily on hourly charges by using

wasteful procedures." Furthermore, Rule 7.1 prohibits a lawyer from making a "false or misleading" statement about the lawyer's services, and Rule 8.4(c) prohibits a lawyer from "engag[ing] in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer[.]"

In RPC 190, the Ethics Committee concluded that it was dishonest for a lawyer to bill one client for the completion of work product and subsequently bill a different client the same amount for the reused work product. "Implicit in an agreement with a client to bill at an hourly rate for hours expended on the client's behalf is the understanding that for each hour of work billed to the client, an hour's worth of work was actually performed. If a lawyer who has agreed to accept hourly compensation for her work subsequently bills the client for reused work product, the lawyer would be engaging in dishonest conduct in violation of Rule [8.4(c)]." RPC 190. In 2007 FEO 13, the Ethics Committee reiterated, "The fiduciary character of the client-lawyer relationship requires a lawyer to act in the client's best interests and to deal fairly with the client. When billing on an hourly basis, fair dealing requires that the lawyer provide an hour's worth of legal services for each hour billed."

The American Bar Association reached a similar conclusion in 1993. In ABA Formal Opinion 93-379, entitled "Billing for Professional Fees, Disbursements, and Other Expenses," the ABA addressed various billing practices involving one lawyer completing work for multiple clients simultaneously, all of which were considered "unreasonable fee[s]" in violation of Model Rule 1.5:

A lawyer who spends four hours of time on behalf of three clients has not earned twelve billable hours. A lawyer who flies for six hours for one client, while working for five hours on behalf of another, has not earned eleven billable hours. A lawyer who is able to reuse old work product has not re-earned the hours previously billed and compensated when the work product was first generated. Rather than looking for profit from fortuity of coincidental scheduling, the desire to get work done rather than watch a movie, or the luck of being asked the identical question twice, the lawyer who has agreed to bill solely on the basis of time spent is obliged to pass the benefits of these economies on to the client. ABA Comm. on Ethics and Prof'l

Responsibility, Formal Op. 93-379 (1993). Multiple state ethics opinions agree with the ABA's conclusions. *See, e.g.*, Oregon Formal Op. 2005-170 (2005) ("A lawyer who bills more than one client for the same time expended on the same service has billed more time than the lawyer actually worked. Lawyer in this question worked a total of one hour for four clients, not four hours. The fact that Lawyer could have billed each client a full hour had each client's case been the only one set for call that day does not change the conclusion. The lawyer-client relationship is 'one of special trust and confidence' and 'must be characterized by fairness, honesty, and good faith.'") (*citing In re Howard*, 304 Or. 193 (1987); Alaska Formal Op. 96-4 (1996) ("For example, a lawyer spends three hours traveling to attend a deposition in Seattle. If the lawyer decides to spend the time on the airplane drafting a motion for a different client, he or she may not charge both clients, each of whom agreed to hourly billing, for the time during which he was traveling on behalf of one client, but drafting a document on behalf of another. The lawyer has not earned six billable hours....[W]here the client has agreed to pay the lawyer on an hourly basis, the economies associated with a lawyer's efficient use of time must benefit the client rather than giving the lawyer an opportunity to charge a client for phantom hours."))

North Carolina joins in the chorus agreeing with the ABA's assessment in Formal Opinion 93-379. In this scenario, Lawyer has spent four hours traveling for Client A, during which he completed three hours of work for Client B. Lawyer did not complete seven hours of work in four hours of actual time; to claim otherwise would be inaccurate and impossible. Accordingly, billing seven hours of work that occurred during the span of four actual hours would be false or misleading in violation of Rule 7.1, dishonest in violation of Rule 8.4(c), and clearly excessive in viola-

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tion of Rule 1.5(a). Instead, Lawyer has an obligation to respect and strengthen the trust and confidence both clients place in Lawyer by carrying out the representation in their best interests, including Lawyer's billing practices. Any benefits created by Lawyer's efficient provision of legal services must be passed on to the clients. What constitutes the appropriate division of fees is beyond the scope of this opinion, but Lawyer must pass along the benefits of his efficient use of time to the clients rather than absorb the financial benefits presented by the opportunity.

#### **Inquiry #2:**

Lawyer appears at calendar call on Monday morning. Lawyer spends one hour attending calendar call, during which Lawyer appeared on behalf of three clients. Lawyer's fee agreement with each client provides Lawyer may bill \$200 for each hour of legal work completed, including court appearances.

May Lawyer bill each of the three clients for one hour of legal work, for a total of three billed hours of work?

#### **Opinion #2:**

No. *See* Opinion #1. ■

## **Proposed Amendments (cont.)**

impairment of the lawyer's ability to exercise independent professional judgment on behalf of the client with whom he or she is having an engaging in sexual relationship conduct is specific to that lawyer's representation of the client and is unlikely to affect the ability of other members of the firm to competently and dispassionately represent the client. ■



## **IMPORTANT NOTICE REGARDING STATE BAR EMAILS**

As a member of the North Carolina State Bar, you are routinely sent critical emails regarding dues notices, CLE report forms, etc. To increase efficiency and reduce waste, many reports and forms that were previously sent by US mail will now only be emailed. To receive these emails, make sure you have a current email address on file with the State Bar. You can check membership information by logging into your account at [portal.ncbar.gov](http://portal.ncbar.gov).

If you have unsubscribed or fear your email has been cleaned from our email list, you can resubscribe by going to [bit.ly/NCBarResubscribe](http://bit.ly/NCBarResubscribe).

Thank you for your attention to this important matter.



## Law School Briefs

### Campbell University School of Law

Leaders from Wake County, Raleigh, Knightdale, and Morrisville gathered at Campbell Law School in downtown Raleigh on April 19 for a ceremonial document signing of the county's new non-discrimination ordinance. The event signifies that the county and several cities and towns including Apex are unified in their adoption of ordinances to protect residents from discrimination and demonstrate that equality, fairness, and inclusion are core values in their communities. The event highlighted the new partnership with Campbell Law's Restorative Justice Clinic in helping the county mediate any complaints brought as a result of the ordinances. Wake County began enforcing the new LGBTQ civil rights law earlier this year. The law school clinic staff and students are already working on resolving disputes. Complaints about discrimination in public spaces and employment can be made at [bit.ly/3kZIpbF](https://bit.ly/3kZIpbF).

Campbell Law School's Blanchard Community Law Clinic served 41 residents of Edgecombe, Nash, and Wilson counties at a no-cost Driver's License Restoration Clinic on Friday, March 4. "Having a suspended driver's license impacts almost every aspect of a person's life, from housing, to family, to employment. It's incredibly difficult to get a job without a valid license, even if the job doesn't involve driving," said Professor Emily Mistr, an attorney for the clinic. The goal of the event was to serve individuals whose licenses are suspended due to unpaid fines and fees or failures to appear in court on traffic charges. The clinic was offered through a partnership between the Blanchard Community Law Clinic, the Equal Access to Justice Commission's Faith and Justice Alliance, and the District Attorney's Office for Edgecombe, Nash, and Wilson Counties. It was the first clinic of its kind in the state to offer this type of service to an entire multi-county prosecutorial district, according to Blanchard Community Law Clinic Director Ashley Campbell.

### Duke University School of Law

Duke Law School will launch a new criminal defense clinic with the aid of a \$2.5 million commitment from the Barton Family Foundation. The clinic, the law school's 12th, will provide students with a hands-on, experiential learning course in the practice of criminal representation and train them to be leaders in ending mass incarceration and racial injustice. Its inaugural director will be Elana Fogel, a federal public defender in San Diego who formerly served as a public defender in Boston and as a fellow in the Criminal Justice Policy Program at Harvard Law School. Fogel graduated from New York University School of Law.

The law school was awarded a \$10 million challenge grant from The Duke Endowment that will be leveraged to provide matching funds for endowments supporting scholarships, summer and post-graduate public interest fellowships, and loan repayment assistance. Dean Kerry Abrams, who in April was reappointed to a second five-year term through June 30, 2028, said the gift will help Duke Law continue to attract a socially and economically diverse student body and enable more students and recent graduates to pursue public interest careers.

Duke Law will welcome a number of new faculty members this fall. They include Veronica Root Martinez, professor of law at Notre Dame Law School and inaugural director of the school's Program on Ethics, Compliance & Inclusion; Christopher Buccafusco, professor at Yeshiva University's Benjamin N. Cardozo School of Law, where he directs its Intellectual Property & Information Law Program; Mara Revkin, a scholar of international and comparative law, national security, and human rights who currently is a fellow at Georgetown University's Center on National Security and the Law; and Jon Petkun, an emerging empirical scholar of law and economics completing a clerkship with Judge Jeffrey A. Meyer of the US District Court for the District of Connecticut.

### University of North Carolina School of Law

UNC School of Law moved up to number 23 out of 192 law schools ranked in the *US News & World Report's* 2023 edition of "America's Best Graduate Schools." Over the last four years, UNC has jumped 22 spots to land in the top 25 law schools. UNC is number 8 of the top public university law schools listed.

The 3L class reached 100% *pro bono* participation. This is the fifth year in a row that the graduating class has reached 100% participation. The Class of 2022 completed more than 11,000 hours of *pro bono* services over the past three years.

Carolina Law's Director Diversity Initiative (DDI) released its 2021 Board Diversity Census for NC's top 50 public companies. The 2021 results show that 26% of the board members at these companies are female, up 15 percentage points from 2006 when DDI was formed. As of 2021, 16% of board seats were held by people of color (POC), up ten percentage points from 2006.

On April 6th, Dean Martin H. Brinkley '92 and North Carolina House Minority Leader Robert T. Reives II '95, recognized the service to NC through the Institute for Innovation. The event featured clients, faculty members, and students showcasing the school's commitment to support entrepreneurs across the state to strengthen communities and the economies.

Carolina Law's Class of 2022 welcomed North Carolina Sen. Sydney J. Batch '05 as its commencement speaker on May 7th. Sen. Batch represents the state's 17th senate district and is a triple Tar Heel.

Allison Standard Constance '09 received the Robert E. Bryan Public Service Award. Constance, Carolina Law's director of *pro bono* initiatives, was recognized at the Carolina Center for Public Service awards ceremony for exemplifying outstanding engagement and service to the state of North Carolina. ■

## John B. McMillan Distinguished Service Award

### Judge Robert H. Hobgood

Retired Chief Resident Superior Court Judge Robert H. Hobgood received the John B. McMillan Distinguished Service Award on March 18, 2022, in the Franklin County courtroom he presided over for more than 38 years. Presenting him the award on behalf of the North Carolina State Bar was Charles Davis, himself a recipient of the award in 2017. Judge W. Allen Cobb Jr. also participated in the presentation.

Judge Hobgood was born in Louisburg, NC, in 1946. He received an AB degree from UNC-Chapel Hill in 1968. He began his distinguished years of public service as a second lieutenant in the United States Army from 1968 to 1971. He continued to serve in the National Guard from 1974 to 1983. Judge Hobgood graduated from the UNC School of Law in 1974 and opened his own law office in Louisburg, NC. He also served in the NC House of Representatives in 1979.

In 1980, Judge Hobgood was appointed by Governor Jim Hunt to the North Carolina Superior Court bench. He served as the senior resident superior court judge for

the Ninth Judicial District until his mandatory retirement in 2018. Judge Hobgood is the longest serving superior court judge in the history of the State of North Carolina. During his time on the bench, Judge Hobgood was elected by his peers as president of the NC Conference of Superior Court Judges and served as a member of the NC Courts Commission. He was a delegate to the National Conference of State Trial Judges from 1997 to 2000 and the judicial liaison for the Computer Litigation Section of the ABA in 1999.

Judge Hobgood also served as a member of the Board of Governors of the NC Bar Association from 1978 to 1981 and was a member of the Board of Governors of the Law Foundation at UNC School of Law. He taught business law classes at Louisburg College, and in 1988 received the Louisburg College Medallion Award. He continued to cultivate his own knowledge of the law, earning his master's in judicial studies degree from the National Judicial College, University of Nevada at Reno, in 1997.

For more than 20 years Judge Hobgood served as chair of the Conference of Superior

Court Judges Pattern Jury Instruction Committee. He was also a superior court judge representative on the Judicial Council. In 2001, Chief Justice I Beverly Lake Jr. asked Judge Hobgood to serve as the director of the Administrative Office of the Courts. During his time as director of the statewide court system, he nevertheless simultaneously carried out his administrative duties as the senior resident judge in the Ninth Judicial District at night and on weekends.

Judge Hobgood is admired, respected, and appreciated throughout the entire legal community. North Carolina, her citizens, and the overall administration of justice have been well served by the service of Judge Hobgood.

### Nominations Sought

Members of the State Bar are encouraged to nominate colleagues who have demonstrated outstanding service to the profession. Information and the nomination form are available online: [ncbar.gov/bar-programs/distinguished-service-award](https://ncbar.gov/bar-programs/distinguished-service-award). Please direct questions to Suzanne Lever at [slever@ncbar.gov](mailto:slever@ncbar.gov). ■

## Council Adopts DEI Statement

*At the April 2022 Quarterly Meeting, the North Carolina State Bar Council adopted the following statement on Diversity, Equity, and Inclusion.*

Lawyers swear an oath to defend the United States and North Carolina Constitutions. These constitutions decree all persons are created equal and endowed with certain inalienable rights and guarantee all persons equal protection of the laws. The

North Carolina Constitution also specifically prohibits discrimination by the State against any person because of race, color, religion, or national origin. The North Carolina State Bar considers diversity and inclusion essential elements of promoting equity and preventing discrimination. Diversity encompasses characteristics that make each of us unique. Equity promotes fairness by aiming to ensure fair treatment, access, opportunity,

resources, and advancement for everyone to succeed. Inclusion fosters a collaborative and respectful environment where diversity of thought, perspective, and experience is valued and encouraged. The North Carolina State Bar therefore recognizes diversity, equity, and inclusion as core values and is committed to being intentional about incorporating diversity, equity, and inclusion into its operations and mission. ■

# July 2022 Bar Exam Applicants

The July 2022 bar examination will be held in Raleigh on July 26 and 27, 2022. Published below are the names of the applicants whose applications were received on or before May 3, 2022. Members are requested to examine it and notify the Board in a signed letter of any information which might influence the Board in considering the general fitness of any applicant for admission. Correspondence should be directed to Lee A. Vlahos, Executive Director, Board of Law Examiners, 5510 Six Forks Rd., Suite 300, Raleigh, NC 27609.

Nicholas Acevedo Winston-Salem, NC	Anne Austin Raleigh, NC	Jessica Bell Raleigh, NC	Laura Brasier Williamsburg, VA	Breann Burns Raleigh, NC
Melissa Adorno Mooresville, SC	Robert Averett Dothan, AL	Asa Bell Raleigh, NC	Kyle Bray Nashville, NC	Lauren Burns Charlottesville, VA
Vincent Agosta Cary, NC	Michael Avitan-Lasry Pawleys Island, SC	Jamie Bellomy Morrisville, NC	Michelle Bredehoeft Raleigh, NC	Emily Burwell Boone, NC
Maria Aguilera Inverness, FL	Tracy Ayotte Carrboro, NC	Christina Belville Raleigh, NC	James Brennan Carrboro, NC	Jacob Busey Charleston, SC
Stephanie Ahlstrom Wilmington, NC	Lindsay Bacon Morrisville, NC	Mario Benavente Fayetteville, NC	Jadae Bridges Durham, NC	Kayla Butler Summerville, SC
Aryana Ainolhayat Raleigh, NC	Peyton Baer Raleigh, NC	Bouchra Benboussetta Cary, NC	Samantha Bridges Greensboro, NC	Shena-Kaye Butler Greensboro, NC
Ghulam Akhonzada High Point, NC	Rhea Bagaria Pineville, NC	Sarah Benecky Raleigh, NC	Kaitlin Briggs State College, PA	Peyton Butt Winston-Salem, NC
Lyman Albright Durham, NC	Cameron Bainbridge Durham, NC	Patrick Benedetto Charlotte, NC	Ryan Bristow High Point, NC	Alaina Byrd Charlotte, NC
Cameron Alderman Raleigh, NC	Shauna Baker-Karl Chapel Hill, NC	Dorothy Bennett Columbia, SC	Kaitlyn Britt Dillon, SC	Kaitlan Cabe Charleston, SC
Safwan Ali Henderson, NC	Talida Balaj Columbia, SC	Alisa Best Forest, VA	Elijah Broadwell Garner, NC	Hannah Caison Chapel Hill, NC
Victoria Allen Raleigh, NC	Bruce Ballard Durham, NC	Grayson Bethel Boston, MA	Sarah Brock Metairie, LA	Fabio Calderon Pompano Beach, FL
Maya Allen Durham, NC	Angelika Ballas Raleigh, NC	Kimberley Beyer Glenville, NC	Victoria Brooks Wilkesboro, NC	Eric Calero Durham, NC
Dawnwin Allen Charlotte, NC	Victor Bao Palmetto Bay, FL	Brandye Birdsall Elizabeth City, NC	Thelma Brooks Charlotte, NC	Jillian Camp Black Creek, NC
Angie Amador Winston-Salem, NC	Emily Baranowski Raleigh, NC	Kalei Bjorklund Pierre, SD	Brandon Brower Raleigh, NC	Lucy Campbell Raleigh, NC
Carly Amendola Raleigh, NC	William Barker Winston-Salem, NC	Neil Blackmon Charlotte, NC	Herbert Brown Garner, NC	Kacie Campbell Asheville, NC
Anna Amsbaugh Raleigh, NC	Artrice Barksdale Charlotte, NC	Danielle Bland Mountville, PA	Kenyada Brown Charlotte, NC	Patrick Campbell Charlotte, NC
Lauren Andrews Greensboro, NC	Sean Barlow Morrisville, NC	Jessica Blau Stanford, CA	Kristopher Brown Charlotte, NC	Mansell Carloni Rural Hall, NC
Shari Anhalt Long Beach, CA	Sontina Barnes Raleigh, NC	Leigh Blomgren Greensboro, NC	Allison Bruns Garner, NC	Caroline Carlyle Chapel Hill, NC
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 Columbia, SC  
**Justin Owens**  
 Wilson, NC  
**William Padula**  
 Charlotte, NC  
**Sarah Page**  
 Winston-Salem, NC  
**Rebeka Parent**  
 Raleigh, NC  
**Jonelle Parker**  
 Raleigh, NC  
**Rhiannon Parker**  
 Columbia, SC  
**Yanping Parks**  
 Raleigh, NC  
**Abigail Parlier**  
 Durham, NC  
**Komal Patel**  
 Pinehurst, NC  
**Roshni Patidar**  
 Charlotte, NC  
**Alison Patterson**  
 Winston-Salem, NC  
**Kerri Patton**  
 Taylorsville, NC  
**Harry Payne**  
 Wilmington, NC  
**Krista Peace**  
 Raleigh, NC  
**Alexis Pendergraft**  
 Chapel Hill, NC  
**Christian Perry**  
 Cary, NC  
**Kelley Petcavich**  
 Chapel Hill, NC  
**Elizabeth Peters**  
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**Andrew Peterson**  
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**Hunter Pethel**

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**Jonathan Pevey**  
 Dallas, TX  
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**Andrew Philip**  
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**Charles Phillips**  
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**Carrie Pickett**  
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**John Pittman**  
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**Catherine Plauche**  
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**Hailey Reall**  
 Maple Hill, NC  
**Kelsey Rector**  
 Pfafftown, NC  
**Lauren Redmon**  
 Asheville, NC  
**Joseph Reed**  
 Redwood Shores, CA

<b>Rebecka Reibe</b> Chapel Hill, NC	<b>Alyssa Sanchez</b> Hickory, NC	<b>Alexander Sherret</b> Lynchburg, VA	<b>Winston-Salem, NC</b>	<b>A'Kira Thomas</b> Durham, NC
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<b>Kristin Remppe</b> Winston-Salem, NC	<b>Carson Sanders</b> Raleigh, NC	<b>Shrayan Shetty</b> Durham, NC	<b>Avery Staley</b> Mooresville, NC	<b>Gabriela Thoren</b> Tuscaloosa, AL
<b>Hunter Revord</b> Winston-Salem, NC	<b>Brett Sanders</b> Alpharetta, GA	<b>Hannah Shows</b> Winston-Salem, NC	<b>Danny Stamey</b> Pasadena, CA	<b>Zachary Tilley</b> Carrboro, NC
<b>Miles Reynolds</b> Louisville, KY	<b>Roberto Santiago</b> Mooresville, NC	<b>Karen Siderovski</b> Winston-Salem, NC	<b>Lauren Stamey</b> Menlo Park, CA	<b>Connor Tilton</b> Eldersburg, MD
<b>Kaleigh Reynolds</b> Forty Fort, PA	<b>Neil Sanyal</b> Raleigh, NC	<b>Cameron Silverglate</b> Weston, FL	<b>Daniel Stanton</b> New Bern, NC	<b>Kimberly Tomkies</b> Charlotte, NC
<b>Christopher Rhodes</b> Durham, NC	<b>Tatiana Saporito</b> Holly Springs, NC	<b>Hannah Simmons</b> Durham, NC	<b>Christina Staudt</b> Lakeview, NC	<b>Connor Torraca</b> Raleigh, NC
<b>Lillie Rhodes</b> Farmville, NC	<b>Jaguar Sasmito</b> Sacramento, CA	<b>Wilton Simons</b> Fayetteville, NC	<b>John Steber</b> Sarasota, FL	<b>Susan Torres</b> East Flatbush, NY
<b>Myron Richard</b> Raleigh, NC	<b>Sorrell Saunders</b> Sanford, NC	<b>Michael Sindoni</b> Chapel Hill, NC	<b>Megan Stemple</b> Syracuse, NY	<b>Justin Torres</b> Lynchburg, VA
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<b>Ashton Rizzi</b> Winston-Salem, NC	<b>Amelia Scott</b> Valdosta, GA	<b>John Sloan</b> Fayetteville, NC	<b>Matthew Stone</b> Clinton, NC	<b>Anna Tucker</b> Charlotte, NC
<b>Lisa Roach</b> Charlotte, NC	<b>Joseph Scott</b> Winston-Salem, NC	<b>Christiane Smedley</b> Carrboro, NC	<b>Gabrielle Supak</b> Wilmington, NC	<b>Lauren Tuffo</b> Charleston, SC
<b>Matthew Roberts</b> Summerfield, NC	<b>Nathaniel Scripa</b> Mooresville, NC	<b>Ajai Smith</b> Durham, NC	<b>Alec Suttle</b> Chapel Hill, NC	<b>Anna Turner</b> Chapel Hill, NC
<b>Mary Robertson</b> Raleigh, NC	<b>Evelyn Sechler</b> Chapel Hill, NC	<b>Elizabeth Smith</b> Wilson, NC	<b>William Swain</b> Cary, NC	<b>Hayley Twing</b> Sanford, NC
<b>Sonya Robinson</b> Charlotte, NC	<b>Tyler Seling</b> Charlotte, NC	<b>Melissa Smith</b> Winston-Salem, NC	<b>Robert Sweet</b> Havelock, NC	<b>Pime Ugarte</b> Greensboro, NC
<b>John Robinson</b> Winston-Salem, NC	<b>Adreanna Sellers</b> Raleigh, NC	<b>Chanon Smith</b> Chapel Hill, NC	<b>Jeffrey Swing</b> High Point, NC	<b>Tanakorn Vachareeyanukul</b> Winston-Salem, NC
<b>Rebecca Robison</b> Greensboro, NC	<b>Victoria Selover</b> Nashville, TN	<b>Destiny Smith</b> Durham, NC	<b>Tyler Talton</b> Goldsboro, NC	<b>Alyssa Valdes</b> Miami, FL
<b>Joya Rodgers</b> Charlotte, NC	<b>Jacob Selvey</b> Harrisburg, NC	<b>Sterlina Smith</b> Raleigh, NC	<b>Muneeba Talukder</b> Charlotte, NC	<b>Lani Van Zyl</b> Charleston, SC
<b>Drew Roeber</b> Arlington, VA	<b>Frederick Serrano-Jimenez</b> Wendell, NC	<b>Victoria Smith</b> Seymour, TN	<b>Haley Tanner</b> Chapel Hill, NC	<b>Jabari Vaughn</b> Charlotte, NC
<b>Desiree Ross</b> Durham, NC	<b>Elijah Setzer</b> Farmington, CT	<b>Andrew Smith</b> Durham, NC	<b>David Tarbet</b> Bermuda Run, NC	<b>Sidney Vaught</b> Winston-Salem, NC
<b>Jeffrey Ross</b> Mt. Pleasant, SC	<b>Maxwell Shafer</b> Wilmington, NC	<b>Yvonne Smith</b> Liberty, NC	<b>Nicole Tashovski</b> Fremont, CA	<b>Suraj Vege</b> Raleigh, NC
<b>Kevin Rothenberg</b> Cary, NC	<b>Rohun Shah</b> Fayetteville, NC	<b>Tamra Smith</b> Fayetteville, NC	<b>Kyle Tatich</b> Matthews, NC	<b>Nicholas Verderame</b> Charlotte, NC
<b>Alejandra Rousselo</b> Lynchburg, VA	<b>Sahil Shah</b> Chapel Hill, NC	<b>Sharonda Smith</b> Charlotte, NC	<b>Christopher Taylor</b> Winston-Salem, NC	<b>Cameron Vick</b> Albemarle, NC
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<b>Chelsea Rush</b> Forest City, NC	<b>Jaimee Sharp</b> Raleigh, NC	<b>Brandon Spalding</b> Waterford, MI	<b>Alexis Tellerd</b> Arlington, VA	<b>Brandon Walker</b> Cary, NC
<b>Grace Russ</b> North Augusta, SC	<b>Dillon Sharpe</b> Chapel Hill, NC	<b>George Sparks</b> Zebulon, NC	<b>Oleg Telyukov</b> Hillsborough, NC	<b>William Walters</b> Columbia, SC
<b>Colin Russell</b> Chapel Hill, NC	<b>Allison Shaughnessy</b> Durham, NC	<b>Amy Spears</b> Lynchburg, VA	<b>Sydney ter Avest</b> Chapel Hill, NC	<b>Dalen Ward</b> Greensboro, NC
<b>Maggie Rymshaw</b> Cary, NC	<b>Christie Shaw</b> Cary, NC	<b>Paul Spellings</b> Atlanta, GA	<b>Raven Terry</b> Mooresville, NC	<b>Victoria Ward</b> Greensboro, NC
<b>Rachel Samuelson</b> Chapel Hill, NC	<b>Miriam Sheppard</b> Snow Hill, NC	<b>Carolyn Spilker</b> Fairfax, VA	<b>Lindsay Thomas</b> Harrisonburg, VA	<b>Aman Washington</b> Durham, NC
<b>Richard Samulski</b>		<b>Brittany Spisak</b>	<b>Chapman Thomas</b> Raleigh, NC	<b>Natalia Watkins</b>



Winston-Salem, NC	Cary, NC	Durham, NC	Asheville, NC	Fuquay Varina, NC
James Watson	Jenny Wheeler	Mary Williams	Jessica Wollum	Jennifer Yagoda
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Raleigh, NC	Charlotte, NC	Zebulon, NC	Durham, NC	Yadkinville, NC
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Charlotte, NC	Arlington, VA	Rocky Mount, NC	Salisbury, NC	Pineville, NC
Xavier Webb	Emma White	Michelle Williams-McNair	Chazle' Woodley	Sonia Yancey
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Winston-Salem, NC	Raleigh, NC	Charleston, SC	Raleigh, NC	Charlottesville, VA
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Kristyn Wescott	Desirae Williams	Bartlomiej Wisla	Tyler Wyckoff	Alexander Zupancic
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Durham, NC	Winston-Salem, NC	Columbia, SC	Charlotte, NC	
Astrid Whalen	Benjamin Williams	Blake Witty	Sacha Xavier	

## In Memoriam

**Omega Clark Abbott**  
Elizabeth City, NC

**Jesse David Abernethy**  
Hickory, NC

**Sharon Hines Agronsky**  
Asheville, NC

**Russell Darren Bostic**  
Harrisonburg, VA

**Martin Luther Brackett Jr.**  
Charlotte, NC

**Gilbert Wilson Chichester**  
Roanoke Rapids, NC

**David Reece Cockman**  
Raleigh, NC

**William Oscar Coffin**  
Charlottesville, VA

**Gerry Crouch Coggin II**  
Charlotte, NC

**Howard D. Cole**  
Greensboro, NC

**Anthony James Cuticchia Jr.**  
Cary, NC

**Charles Bennett Deane Jr.**  
Rockingham, NC

**Walter Estes Dellinger III**  
Washington, DC

**Jeffrey Duane Dillman**  
Durham, NC

**Ronald Conrad Dilthey**  
Raleigh, NC

**Lisa James Dixon**  
Raleigh, NC

**Tyson Yates Dobson Jr.**  
Smithfield, NC

**Dwight Austin Ensley**  
Greensboro, NC

**Winfred R. Ervin**  
Fort Pierce, FL

**Thomas Franklin Foster**  
High Point, NC

**Anthony Wilton Gay Sr.**  
Zebulon, NC

**Roscoe Maurice Holland Jr.**  
Clinton, NC

**William M. Holland Jr.**  
Tampa, FL

**Richard Long Huffman Jr.**  
Salisbury, NC

**Carolyn Burnette Ingram**  
Kenansville, NC

**Thomas Morgan Johnson**  
Fayetteville, NC

**Van Hewes Johnson**  
Carrollton, TX

**William Kelly Johnson**  
Newland, NC

**Spencer G. Key Jr.**  
Dobson, NC

**Emil Failing Kratt**  
Charlotte, NC

**Eddie Crawford Mitchell**  
Winston-Salem, NC

**James Franklin Mock Sr.**  
Lexington, NC

**Ernest H. Morton Jr.**  
Albemarle, NC

**Joshua J. Morton Jr.**  
Locust, NC

**Rudy Langdon Ogburn**  
Raleigh, NC

**Alice Batts Phillips**  
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**William Lee Powell Jr.**  
Goldsboro, NC

**Glenn C. Raynor**  
Raleigh, NC

**John Herbert White Small**  
Elizabeth City, NC

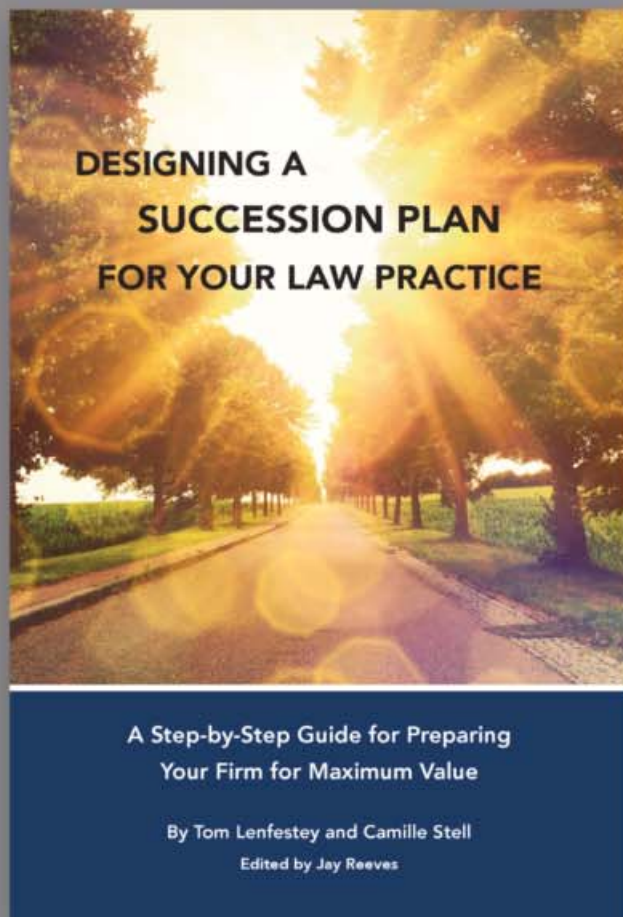
**Creighton Wolfe Sossomon**  
Highlands, NC

**Nelson W. Taylor III**  
Morehead City, NC

**Marion Patrice Walker**  
Chapel Hill, NC

**Gregory Donald Whitaker**  
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